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K. R. Karanth

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ON

ALIYASANTANA LAW AND USAGE

BY

GANGOLLY KRISHNA RAO, B. A., L. L. B.,

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CRIMINAL TRESPASS—*High Court, power of, to allow composition of an offence on revision—Criminal Procedure Code (Act V of 1898), ss. 345 (5), 423 (1) (d), 439—Necessity of Criminal intent—Entry on land under bonâ fide claim of right—Penal Code (Act XLV of 1860), ss. 441, 447.* The High Court has no power, as a Court of Revision, under s. 439 read with s. 423 (1) (d), to sanction the composition of an offence when entered into after the conviction of the accused. *Adhar Chandra Dey* v. *Subodh Chandra Ghosh*, 18 C. W. N. 1212, *Sankar Rangayy* v. *Sankar Ramayya*, 16 Cr. L. J., 750 ; 29 Mad. L. J. 521, and *Emperor* v. *Ram Chandra*, I. L. R. 37 All. 127, followed. *Emperor* v. *Ram Pyari*, I. L. R. 32 All. 153, *Naqi Ahmad* v. *King-Emperor*, 11 All. L. J. 13, *Nidhan Singh* v. *King-Emperor*, 1 Cr. L. J. 599 ; 5 Punj. L. R. 252, *Ram Sarup* v. *Emperor*, 11 Cr. L. J. 496 ; 13 O. C. 161, and *Lall* v. *Emperor*, 15 Cr. L. J. 561 ; 17 O. C. 92, dissented from. *Abadi Begum* v. *Ali Husen* (1897) All. W. N. 26, distinguished. To sustain a conviction under s. 447 of the Penal Code, it is necessary to prove not only entry on land in the possession of the complainant but also one of the intents specified in s. 441. Where a person was charged under ss. 447 and 501 of the Penal Code and convicted only under the former : *Held*, that the intent to commit an offence or to intimidate, insult or annoy not having been established, the conviction was bad. If a person enters upon land in the possession of another, in the exercise of a *bonâ fide* claim of right without any such intent, he cannot be convicted under s. 447, though he may have no right to the land. *Empress* v. *Budh Singh*, I. L. R. 2 All. 101, *Re Shistidhur Parui*, 9 B. L. R. App. 19, and *Jurakhan Singh* v. *King-Emperor*, 7 C. L. J. 238, followed.

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HINDU LAW—*Joint family—Mitakshara law—Allegation of separation by one member of joint family—Expression of intention to hold share separately followed by suit for partition—Unequivocal and clearly expressed intention—"Separation" as distinct from "division of shares of property."* In this case their Lordships of the Judicial Committee *held*, on the facts, that the conduct of the plaintiff, a member of a joint Hindu family governed by the Mitakshara law, in indicating by a notice in a registered letter his intention to separate himself and enjoy his share in severalty, coupled with a suit for partition was as "unequivocal" and "clearly expressed" an intention as could be made, and that it amounted to a separation with all its legal consequences. The rule of law applicable to cases of separation from the joint undivided family laid down in *Suraj Narain* v. *Iqbal Narain*, I. L. R. 35 [illegible] Nowhere in the Mitak-

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GANGOLLY KRISHNA RAO, B. A., L. L B.,

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To

THE HONORABLE HORATIO HALE SHEPHARD, M. A.,

(BARRISTER-AT-LAW)

OFFICIATING CHIEF JUSTICE OF THE HIGH COURT
OF JUDICATURE AT MADRAS,

THIS LITTLE BOOK

IS

BY KIND PERMISSION

RESPECTFULLY DEDICATED.

PREFACE.

WHILE there have been several treatises bearing upon the Marumakkatayam usage of Malabar, there has been none, so far as I know, which presents a complete view of the Aliya Santana Law of Canara. The only work on the subject is the Code of Bhutal Pandya in Canarese, with English translations thereof, one of which only, by Mr. T. Gopal Kristna Pillay, contains rulings of the Madras High Court. But even this latter does not purport to be exhaustive, and besides, is as old as 1873. Consequently, one experiences much difficulty in looking out for cases necessary for the purpose, whenever any question of law or of custom arises for adjudication. The object of this book is to supply this want.

I have, however, not confined myself to a simple collection of the decided cases, but aimed at a general discussion of the principles governing the law, thus avoiding the tediousness of a mere Digest, and extending the sphere of its usefulness to those interested in the subject, besides the Judge and the practitioner. No distinction has been made between the reported and the unreported cases, as some of these latter will

be found to be as important as the former. To facilitate reference, I have given the number and date of the decision, where it is an unreported one.

The discussion of the origin of Aliya Santana Law and the views expressed herein with regard to its affinity to Malabar Law, though not strictly within the province of a legal work, may yet not be deemed out of place in a book professing to deal with the Aliya Santana custom as a whole. The subject, however, is far too difficult to be treated in a summary way, and opinions will greatly differ upon the point.

At the end of the book, I have re-printed the Malabar Marriage Act and the Bhutal Pandya's Code, the former for easy reference, and the latter, that the original may not be lost.

In conclusion, I hope that the book will serve the purpose for which it is intended. My thanks are due, among others, to H. G. Joseph Esq., District and Sessions Judge, South Canara, for the kind permission he gave me to see the unreported decisions, to Mr. K. Krishna Rau, Sub-Judge, Cocanada, for the many valuable suggestions and corrections he made, and to Mr. U. Raghunathaya, Pensioned Translator, Collector's Office, for preparing an Index to the work and for other assistance rendered to me, while the work was in the press.

Mangalore, 2nd May 1898. G. K. R.

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CHAPTER I.

NATURE AND ORIGIN OF ALIYA SANTANA LAW.

1. The Aliya Santana Law of South Canara, as its name implies (Aliya = nephew, Santana = line or family) is a system of inheritance to the family property in which succession is traced in the female line. It is more of the nature of a custom peculiar to certain classes of people in the district, rather than a general law governing the whole of its people. "It is a part of the law of the personal status of the class to which the individual belongs. Aliya Santana custom cannot be treated as the *lexiloci* of the Canara District." (Casmere Rebello *vs.* Lingu*). It is chiefly based upon the usages and practices found in certain communities and is, in fact, the recognition by judicial tribunals of certain well-established customs, which have moulded the lives and regulated the dealings of the community for generations, in so far as those customs are not opposed to rules of public morality and contrary to public policy. The customs so recognised by the Courts are as much a part of the personal law governing the Aliya Santana people and are of as binding a

Nature.

* S. A. 1051 of 1892, 24. 7. 1893.

character as any portion of the general law created by statute and to which they are subject. The law, in this respect, could be hardly said to have passed beyond the stage of 'customary law' in the archaic system of jurisprudence of these people, any more than the more developed system of Hindu Law.

Difference between Hindu Law and Aliya Santana Law.

2. It was at one time supposed that this law, as also the neighbouring system of Marumakta-yam Law of Malabar, was but a branch of the ordinary Hindu Law and observations to that effect are to be found in some of the earlier decisions of the Suddur Court and of the local Courts.* But it is now a well-established doctrine that rules of Hindu Law can no more be applicable to the Aliya Santana system than to people governed by Mahomedan law or to Parsees. The principles which underlie and determine the questions under Hindu Law with regard to the practice of adoption, marriage, succession and the like would be unavailing and mischievous in their practical application to the practices observed in connection with them by the Aliya Santana people. The nice considerations of spiritual benefits to be conferred on the father by the pious acts of the son, the restrictions which limit the selection of an individual for adoption, the degree of nearness or remoteness of the heir to the deceased among agnates, would be all foreign to the system of inheritance under consideration. Thus in a case where the adoption of a female while a male issue was living was sought to be justified on the ground that the male issue who would otherwise inherit, was disqualified in consequence of his leprosy by analogy of Hindu Law, the High Court (Muthusami Ayer and Shepherd JJ) held

*S. D. 125 of 55 Page 26, Ib. for 1856.

that such a plea was unsustainable inasmuch as "the Hindu Law cannot be extended to Aliya Santana usage by analogy, especially as it rests on special conventional grounds *"so far as it relates to disqualified heirs."* Chendu *vs.* Subbu*. No doubt, the principle enunciated is limited to the question in the particular case then at issue but the general principle is the same—Krishna Shetti *vs.* Sadiya Shetti† also Sanku *vs.* Puttamma.‡ Neither can it be said that the Aliya Santana system is only a local violation of the general principles of Hindu Law and all those canons of antiquity, certainty and uniformity enunciated by the Privy Council in Rama Laxumi *vs.* Shivanatha§ as essential where a particular usage is set up in derogation to the general rule of Hindu Law could be insisted upon in proving the Aliya Santana customs. The fallacy of such a supposition was well pointed out by their Lordships Sir Arthur Collins C. J. and Shepherd J in Rarichan *vs.* Perachi¶. In that case a member of the Tiyar community in Calicut following the Makkatyam rule had set up a claim to the property of his deceased brother in preference to the widow. The District Judge treated the succession of the brother as a special custom deviating from the ordinary law. Their Lordships said "The judgment of the District Judge appears to be based upon the assumption that because a community is said to follow Makkatyam, it must be taken to be governed by the Hindu Law of inheritance * * * * . The Judge has treated the succession of the brother as a special custom deviating from the ordinary law. This way of treating the case rests upon the fallacy above-mentioned; that

*I. L. R. 13 Mad. 209. †S. A. 1585 of 1892, 2. 4. 1895. ‡I. L. R. 14 Mad. 289. §14 M. I. A. 570. ¶I. L. R. 15 Mad. 281.

the ordinary law of the Tiyars of Calicut is the Hindu Law, pure and simple." The case was accordingly remanded for the return of fresh findings upon the evidence. As observed in the Madras Law Journal Vol. 3 Page 261 "the question in all cases is whether from the history and traditions of the particular caste or sect in question, it can be said to be governed by any definite system of Law and only if they are so governed can any special usage set up in opposition to that system, be required to be proved as a particular custom." The usages are entirely distinct and independent of those obtaining under Hindu Law. (see also Mayne on Hindu Law and Usage, IV Edition, Paras 3 and 43).

Characteristics of Aliya Santana Law.

3. The most distinctive features of Aliya Santana Law, like the kindred system of Marumaktayam Law of Malabar are three, viz. (1) the tracing up of kinship in the family to the maternal ancestor in the female line, (2) the non-recognition of the institution of marriage in the family system and (3) prohibition of compulsory division or impartibility of the family property. Each of these present so marked an aspect and so distinct a character from that of the ordinary Hindu Law that the notions derived from a study of the latter have completely undergone a thorough change in the former. In fact, one would feel that he has arrived at such a stage that the two systems can only be expressed in terms of direct opposition to each other.

4. The first and most important characteristic of the family system under Aliya Santana Law is the tracing of the descent from the maternal ancestor in the female line. Whereas in a joint Hindu family governed by the ordinary rules of Hindu

Law, the *Makkala Santana system*, the membership to the family is traced to the paternal ancestor in the male line and the rights to the family property are determined with regard to the degree of relationship to that paternal ancestor in the male line through three generations, in the joint family system under Aliya Santana Law, the children of the male issue count for nothing and belong to the family of their mother, constituting a different family altogether. This arises from the ignoring of the institution of marriage in the family system of the Aliya Santana people. The marriage as an institution is not recognised as conferring any rights to property of the parents upon the issue and no legal consequences could be said to flow from that relationship as *husband and wife* except perhaps a right to maintenance by the wife under the general provisions of the Criminal Law. The recent Malabar Marriage Act of 1896 has modified to a great extent, the relations existing between husband and wife but it only applies to persons registering their marriages under the Act and does not affect the general law existing before. In truth, these two features of the Aliya Santana Law are so closely connected together that the one may be said to be the direct consequence of the other. It may safely be asserted that the recognition of the marriage system will be fatal to the continuance of the present joint family system and that in course of time, the paternal relationship recognised by law as giving rights to property to the issue of marriage, will completely shatter the fabric of the family system as now found among the people subject to that law.

5. The next in importance is the prohibition of compulsory division, at the instance of a member, of the family pro-

perty in Aliya Santana families. The bond of union in the family is submission of the members of the family to the eldest or seniormost member of the family in the female line, male or female. This resembles the undivided family system of Hindu Law except that the manager of a Hindu family is the eldest male in the male line but differs from it in that the family property is not only undivided but *indivisible*. Under the Hindu Law, the right to partition is inherent in every member of the family, females excepted, in the male line and what was once joint family property could become divided or partitioned among the members at the instance of any male member who constitutes the co-parcenary. But in Aliya Santana families, under no circumstances could such a division be claimed as of right by any member and his or her right will be restricted to one of maintenance from the family property under very special conditions. "The preservation of the unity of the family is the only effectual mode of securing to the members, severally a full share of the beneficent enjoyment of the joint estate." Subba Hegade *vs.* Tongu.*

6. Such are the distinctive features of the Aliya Santana system of inheritance which distinguishes it from the general body of usage of the ordinary Hindu Law. In no two particulars could the two systems be said to agree, except as mentioned above in the application of principles of alienation and mode of enjoyment of the family property, when the family remains joint and undivided as a co-parcenary. But even these principles are not peculiar to the joint family system under Hindu Law but are such as could be deduced from the constitution of the joint character and interest possessed by

* 4 M. H. C. R. 190.

the family members with regard to the enjoyment of the joint estate.

Its origin—Popular version.

7. The origin of this Aliya Santana system is lost in obscurity and could, now, at this distance of time, be only a matter of conjecture and speculation. The popular belief is that it had its source in the law promulgated by Bhutal Pandya, the Sovereign Prince who ruled this country at one time and that it was for the first time introduced by him. The popular version of it is that contained in the edition of *Bhutal Pandya's Kattu, Kattalegalu*, which has been thus briefly sketched in the memorandum submitted to the Malabar marriage commission, by one of its members, Mr. Mundappa Bangera.

"The Bhutal Pandya's 'Aliya Santana Law' shews that it was introduced by a despotic prince called Bhutal Pandya about the year 77 A. D. in supersession of the Makkala Santana or inheritance from father to son which was then prevailing (Modern South Canara). It is said that the maternal uncle of this prince, called Deva Pandya wanted to launch his newly constructed ships with valuable cargo in them when Kundodara, King of Demons, demanded a human sacrifice. Deva Pandya asked his wife's permission to offer one of his sons, but she refused, while his sister Satyavati offered her son Jaya Pandya for the purpose. Kundodara discovering in the child, signs of future greatness waived the sacrifice and permitted the ships to sail. He then took the child, restored to him his father's kingdom of Jayantika and gave him the name of Bhutal Pandya. Subsequently when some of the ships brought immense wealth, the Demon again appeared and demanded of Deva Pandya another human sacrifice. On the latter again

consulting his wife, she refused to comply with the request and publicly renounced her title and that of her children to the valuable property brought in the ships. Kundodara then demanded Deva Pandya to disinherit his sons, of the wealth which had been brought in those ships, as also of the kingdom and to bestow all, on his sister's son, the abovenamed Jaya Pandya or Bhutal Pandya. This was accordingly done. And as this prince inherited his kingdom from his maternal uncle and not from his father, he ruled that his own example should be followed by his subjects and it was thus that the Aliya Santana Law was established on the 3rd Magha Sudha of the year 1 of the Era of Shalivahana called Ishwara about A. D. 77" (Vide also extract from the Madras Journal of Literature and Science No. 1 III Series July 1864. Translated by M. O. Shingalacharyar, Canarese Translator to the High Court and the edition by German Press in Kanarese, 1859). This Bhutal Pandya, it is said, ruled 75 years and his nephew Vidyudyumna Pandya Raya for 81 years and so on.

8. Viewed as a philosophic theory, this account of the origin is wanting in precision and is opposed to all historical knowledge we possess on the subject. There was one king, it appears, named Bhutal Pandya, but he ruled the country about 1250 A. D. and not 77 A. D., as described in the Code of Bhutal Pandya. (See South Canara Manual Vol. 1 Page 264, Buchanan's History of Canara and Mysore 1800, Page 283). The supernatural element has so far been mixed up with the natural, in the account, as to render the task of elimination well nigh impossible. The king of Demons or *Bhutagalu* is introduced in the story and what was the actual influence exerted on the alleged king Bhutal Pandya that induced him

to introduce this unique and unnatural system is left in uncertainty and doubt. Mr. Chendu Menon the Mangalore Sub-Judge remarks "The manifestly fabulous account given in this book (Code of Bhutal Pandya) of the king Bhutal Pandya, his connection with the Demon king Kundodara and the various miracles and the supernatural incidents in connection with the reign of this mythical king recorded in this book, makes me hesitate very much to receive the account given in it as judicial evidence." Casmere Rebello *vs.* Lingu.*

Aliya Santana Law—not the original Law.

9. Mr. Chamier in his work on "Land Tenures of Canara" at pages 15, and 60, offers the theory that the Aliya Santana system must have been introduced into the district in about the 13th century, most probably relying on the event that Bhutal Pandya reigned about 1250 A. D. This theory derives some support from the decision of the Madras High Court in Antamma *vs.* Kaveri.† His Lordship the Chief Justice Sir Charles Turner in delivering the Judgment of the Court said: "There is some support for the contention that the Aliya Santana was not the original law of the Hindus in Canara, and although if it were borrowed from the South it may resemble Malabar Law, it is not to be assumed that they are on all points identical." The discussion in the case related to the devolution of self-acquired property, and the decision turned upon the question of usage obtaining among Aliya Santana families, being thus reduced to one of fact depending upon evidence adduced, apart from the application of general principles of Malabar or Hindu Law. A hint is thus thrown that it may have been borrowed and might not have been the original law.

* A. S. 230 of 1890. † I. L. R. 7 Mad. 575.

But there is no historical evidence to shew at what period and in what manner the usages of a foreign country were imported into the District. The wholesale introduction of the usages of one country at any particular period of time, in substitution of the then existing law seems to be opposed to the laws of genesis of society.

Probable origin.

10. Perhaps we may be nearer the truth, if we were to suppose that both the Marumakkatayam system of Malabar and the Aliya Santana system of Canara represent the survival of an institution which has been now found to have been widely extended in early times. The late Mr. Justice Muttusami Ayyar thus traces the origin of Marumakkatayam Law of Malabar: "Comparative ancient history suggests that the social system was probably organised at a time when relationship was derived from the mother and when a child did not know its father and the father his child, or at all events when paternity was regarded as uncertain. In a primitive stage of social organisation, relationship might naturally be derived rather from the mother from whom the children indubitably derive their being than from the father as to whose real relationship a doubt might sometimes arise. The institution of marriage and the relation of father and child seem to us so natural and obvious that we are apt to look upon them as aboriginal and common to the whole human race, but we must dismiss this idea from our minds in order to understand the basis on which the social system was originally constructed in Malabar. For the recognition of consanguinity as the sole basis of relationship and the elimination at each generation from the family pedigree of the husband in the case of a female and of the wife and

children in the case of a male, constitute the characteristic features of this unique system of family. This mode of tracing relationship, strange as it might appear at first sight is not however peculiar to Malabar. Herodotus says that one custom peculiar to the ancient Lycians was that they took their names from their mothers and reckoned up their ancestry in the female line. Lubbock states in his work on Savages that on Etruscan tombs, descent is traced through the female line. Speaking of the ancient Germans, Tacitus observes, children were regarded with equal affection by their maternal uncles as by their fathers and some even consider this as the more sacred bond of consanguinity and prefer it in the acquisition of hostages. This description seems to point to a state of society in which female inheritance had been recently but not universally abandoned. Again both Mr. McLennan and Lubbock remark that in the ancient Pictish kingdom, no son is recorded to have succeeded his father till the 8th century. Turning to India, there are traces in Vedic texts of a controversy as to whether the father or the mother contributes most to the birth of a son and of a recent adoption of the theory that we owe the spiritual part of our nature more to the father than to the mother. It is not unlikely that the recognition of consanguinity as the sole test of relationship had its origin in Malabar in the absence of marriage and in a casual or fugitive relation of the sexes." (Memorandum submitted by the President of the Malabar Marriage Commission Pages 80 and 81). The same may also account for the origin of Aliya Santana Law which resembles it in all important aspects. (*post* Chap. IX) (See also Wigram's Malabar Law and Custom Page 3).

11. Whatever may be the origin of the system, and whether the matriarchal theory, as it is called, is sufficient to explain away all the social phenomena it presents, there can be no doubt that the Aliya Santana system indicates a social organisation whose progress must have been arrested at a very early stage of its course and though the country was occupied by the Brahmins, their civilised neighbours, yet these latter were not able to exert any lasting influence upon them and modify any of the customs to an appreciable degree; and lastly the system would have broken to pieces by this time by the solvent influences of civilisation of later times, had not the counteracting influences of the British Courts of Justice been brought into play.

12. That this is so, is amply borne out by the historical and other evidence available. Leaving the traditionary history apart, it seems pretty certain that the whole of Tuluva corresponding to the major portion of the present South Canara District, except what was annexed from the dominion of Coorg, was governed for more than three or four centuries from the 12th to the 16th century A. D. by Jain Chiefs who were in no way disposed towards Brahmanism but who, on the other hand, were rather hostile to such an influence, especially when one of the chiefs by name Vishnuvardhana was converted to Hinduism, about the year 1187 A. D., the event seems to have provoked the jealousy of the Jains who commenced a vigorous persecution of Brahmins (See South Canara Manual Vol. 1 page 63.) The subsequent Mahomedan rule did not make itself particularly felt and the customs of the people were left undisturbed when the district passed into the possession of the British in the beginning of this century. The wise

and beneficent policy of the British Government of allowing the people to be governed by their own laws in respect of their caste usages and institutions, not only tended to the preservation of these customs but in the matter of two particulars at least viz. of marriage and partition, retarded their progress towards a more developed system of law. It is generally believed that, had it not been for the decisions reported in Munda Shetty *vs.* Timmaju Hengsu* and Subbu Hegade *vs.* Tongu,† the process of disintegration and the breaking up of the *Tarwad* or family system would have been complete. Now that a wholesome change has been introduced by a legislative enactment, it remains to be seen how far the benefits of that enactment will be taken advantage of by the people.

CHAPTER II.

THE CODE OF BHUTAL PANDYA.

Bhutal Pandya's Kattu.

13. The only work bearing upon the Aliya Santana Law is a small pamphlet in Canarese containing rules to be observed by the Aliya Santana people, under the name of Bhutal Pandya's Kattu Kattalegalu *i. e.*, rules or commandments enjoined by Bhutal Pandya who is supposed to be the author of this law. It first attracted the notice of the Courts in 1843 and formed the basis of the decision in Appeal Suit 82 of 1843 by Mr. Findley Anderson, Civil Judge of Mangalore. It was printed and published in 1859 by the German Mission Press, Mangalore and translated in English in 1864 by Mr. Shingala Chariar, Canarese Translator

* 1 M. H. C. R. 380. † IV M. H. C. R. 203.

to the High Court which was published in the Madras Journal of Literature and Science No. 1 III Series July 1864. Another translation of it in English, appeared, by Mr. Ramasawmy Naidoo, Interpreter of the High Court, in about 1873 and in the same year another translation in English was published by Mr. T. Gopal Kristnah Pillay the Hazur Sheristedar of South Canara, supplemented by foot-notes of the rulings of the High Court.

14. Ever since the decision in A. S. 82 of 1843, Bhutal Pandya's Kattu was frequently referred to by the Local Courts and in the earlier decisions of the High Court it was regarded as conclusive upon the subject. In Munda Chetti *vs.* Timmaju Hengsu* and in Subbu Hegade *vs.* Tungu† it was chiefly relied upon in elucidation of the law relating to partition and maintenance and it is spoken of as "the work of authority" in the latter of the two cases mentioned. But the genuineness of the work first began to be doubted by Dr. Burnell (see Nelson's view of Hindu Law Pages 95 and 98) who was inclined to think it a fabrication and of no value. The High Court also, have, since, doubted its accuracy, or at any rate, regard it as of doubtful authority (vide Deyi *vs.* Devu)‡. Mr. Chendu Menon the Sub-Judge "can attach to this book no more importance than what the Judges in Malabar attach to the fables known there as Keralopatti or Kerala Purana" and thinks that if the various dogmas to be found in the book were to be followed by Courts of Justice as a safe guide in determining questions of inheritance and succession, "the present customs and rules of castes, observed by many castes would be revolu-

* 1 Madras High Court Report Page 380. † 4 Madras High Court Report Page 196. ‡ I. L. R. 8 Mad. 353.

K. R. Kamath,
ADVOCATE,
16, KUMARAPARK EAST,
BANGALORE-1.

tionised" (Casmere Rebello *vs.* Lingu).* Though the book could not be regarded as authentic in the sense that it emanated from Bhutal Pandya, the supposed king of this country, yet it cannot be seriously asserted that it does not correctly represent the regulations governing the customs of the Aliya Santana people. One of the arguments adduced in support of the view that the book must be spurious is, that the list given therein of the castes following the Aliya Santana system is not correct inasmuch as several of them do not observe the Aliya Santana rules but follow the ordinary mode of inheritance under Hindu Law. It may well be that at the time when the book was being written, the classes mentioned therein were under the Aliya Santana system and have since shaken off the trammels of that law. For, the process of renouncing the *Aliya Kattu* for *Makkala Kattu* or the ordinary mode of inheritance under Hindu Law could be still observed going on, particularly among those castes who are on the border line of Brahmins and Sudras as goldsmiths, carpenters, blacksmiths and oilmongers who wear the sacred thread and who wish to simulate the Brahminical observances. Thus in Annappachari and another *vs.* Venkappachari† and in Nagamma *vs.* Fernandes‡ it was found on evidence that the goldsmiths though included under the Panchala class in Bhutal Pandya's Code had adopted the Makkala Santana rules. So also in Casmere Rebello *vs.* Lingu,¶ it was held that Ganigas or oilmongers are subject to the ordinary Hindu Law. It is always a question of great intricacy to determine by which law a particular community is governed for the same castes follow the one or the

* A. S. 236 of 90. † A. S. 21 of 90, 6—3—91. ‡ S. A. 1662 of 88, 17—12—89. ¶ S. A. 1051 of 92, 24—7—93.

other according to the locality they inhabit. One would not therefore be warranted in concluding that the book did not correctly represent the law as it was then understood. Neither could it be said that it was a recent fabrication, for, the mention of goldsmiths as Aliya Santana men points to a period, at any rate long anterior to 1843 when the book was first brought to the notice of the Courts. The contention that goldsmiths were the followers of the ordinary rule of inheritance under Hindu Law seems to have been raised so far back as 1828 (vide Judgment of the Provincial Court of Appeal No. 15 of 1832). Even the legendary origin ascribed to Bhutal Pandya, only shews that the author was only recording the popular belief of the times. Anyhow it can be taken to have been "practically accepted by the people as the only book containing the Aliya Santana custom followed by them."

Subjects treated in the book.

15. This book gives us a full description of the manners and customs prevailing among the Aliya Santana people. These customs are divided into 14 Kattus or rules and 16 Kattales or commandments. The Kattus or rules relate to the social position of each of the particular Balis or tribes, intermarriages between those Balis, the classes of people who ought to follow the Aliya Santana Law, the management of the family property, the ceremonies to be observed by relations on occasions of births and deaths, and lastly to the perpetuation of lineage in the family on failure of heirs by adoption &c. The 16 Kattales or commandments concern themselves mostly with the marriage customs and contain elaborate rules as to the mode of treatment to be accorded by the community to women who go astray in the observance of their cast rules.

Balis.

16. The Balis spoken of in the book correspond to the Gotras of the Brahmins under the Hindu Law and are descendants of a common ancestress in the female line just as persons of the same Gotra are descendants of a common remote ancestor in the male line. They are peculiar to each caste and rules are provided regulating intermarriages, between the several Balis, which are observed at the present day. Marriages between members of the same Bali are considered to be incestuous but a marriage is permitted between the first cousins as under the Hindu Law.

Dignities and Honors.

17. The dignities and honors attached to these Balis are not of much consequence in the domain of positive law, though their importance cannot be denied in the regulation of the social manners. A loss of a particular dignity or honor, or even a slight departure from customary honors and respects due to particular families would be strongly resented to and would be considered as a thing of the greatest concern and sometimes becomes the chief cause of dispute and rivalry between the rival families. The intensity of feeling and the heart-burning it causes can be judged from the semi-civilised condition in which these societies live, though no doubt great improvement has been made in recent times, and also from the way in which these disputes are sometimes carried into Courts. But suits merely to establish such honors have been held to be unsustainable. In Kantu Bhandari *vs.* Kantu Rai* the Plaintiff sued to establish his right to certain respects due to him on certain occasions when he went to the temple and it was held by the High Court that the suit could not be maintained. From these suits, however,

* S. A. 952 of 1883, 6—3—84.

must be carefully distinguished offices to which certain advantages and highly prized customary honors are attached. Such are the offices of Pattam and the headmanship of a Magne or a village. In Timmappa Hegade *vs.* Mahalinga Hegade* a suit was brought by the senior member in the family against a junior but a descendant of the senior branch. It was held relying upon the text of Bhutal Pandya that the Pattam was indivisible and no arrangement having been made relating to it, the right of succession remains, just as if there had been no division of the family property. The passage translated and relied upon in 1 M. H. C. R. 380 was found to be incorrect. Again in Sankappa Rai *vs.* Chikkappa Rai† Plaintiff sued to establish his right for the headmanship of the Harekal Magne and to recover damages from the Defendant for the infringement of that right. As such headman or Moktessor, Plaintiff had the right of managing, superintending and regulating all the ceremonies of the plaint temple belonging to the Magne. Defendant usurped the place of the Plaintiff at a Nema ceremony of the temple. It was held by the High Court that under these circumstances, Defendant having openly usurped Plaintiff's place in the performance of the said ceremony and by taking possession of the temple, he had infringed the Plaintiff's right and that Plaintiff was entitled to recover some damages.

Ceremonies on occasions of births and deaths.

18. With regard to the ceremonies to be observed during the occasions of births and deaths in a family, it is clear, they have no significance in the rule of inheritance obtaining under the system. The religious usages and observances of

* 4 M. H. C. R. 28. † S. A. 585 of 1879, 1—3—80.

these people have little or no effect upon the succession to the family property. The only observances that are enjoined on the occasion of birth in the family are that the *Santana i. e.* the nephews and nieces in contradistinction to *Kutumba* of the Hindu family, shall observe the Sutaka or pollution and that too, not on the death, which is left to fall to the share of wife and children who are to participate in the effects of sin and virtue (vide rule 6 sub-clauses 1 and 2 of the Code of Bhutal Pandya). The theory of spiritual efficacy in the oblations offered to the male ancestors which plays so important a part in the Hindu Law does not find a place in the system but on the contrary, the funerals of the deceased ancestor or ancestress are to be performed by the nephew along with the children of the deceased. The ceremony which is performed annually to the *manes* of departed ancestors called Mahalaya and which is the chief means of preserving the family tradition among the Hindus under the Hindu Law is specially prohibited in the book for the followers of Aliya Santana Law. In practice, however, it appears, it is usual for the heads of families among Bunts and other castes, to give cocoanuts and rice to the Brahmins in lieu of *Pindas* (oblations) by the Brahmins, on the Mahalaya day to keep green the memories of the departed ancestors. Similarly, all those rites which are prescribed for purification during auspicious and inauspicious occasions of births and deaths, such as Punya Homa, Panchagavya &c. ceremonies of the Brahmins, though prohibited, yet in practice, some sort of ceremonies in imitation of the Brahmanical observances, are observed by them. Not only the family ceremonies but even the public rituals and religious beliefs of the Aliya Santana people and the Brahmins widely

differ. Demonolatry or demon-worship forms the principal creed of this system and endowments set apart for demon-worship are common in the Aliya Santana families as to family deities among the Hindu families during partition. "Each village has its Bhutastan in which the officiating priest or pujari is usually a man of the Billava caste and shrines innumerable are scattered throughout the length and the breadth of the land, for the propitiation of the malevolent spirits of deceased celebrities, who in their life-time had acquired a more than a usual local reputation whether for good or for evil or had met with a sudden or violent death. In addition to these, there are demons of the jungle, demons of the waste, demons who guard the village boundaries and demons whose only vocation is that of playing tricks such as throwing stones on houses and causing mischief generally." The influence exercised by the demon-worship is so great upon the lives of these people, that every good or evil which takes place in the family is attributed to the action of some demon or other which has been propitiated by the performance or offended by the omission of some ceremony due to it. For an interesting account of their customs the reader is referred to South Canara Manual Vol. 1.

19. But except as stated above, that the funerals of the deceased ancestor are conducted by the nephew, who inherits to his uncle, there is nothing indicative of any close connection between the religious usages observed by Aliya Santana men, with the rights to the family property.

20. The text of the Bhutal Pandya as regards the management of the family property has given rise to many decisions and is principally the chief basis upon which the whole of Aliya Santana Law is evolved. The subject will be adverted

to at its proper place in Chapter V on "The Constitution of The Aliya Santana family;" so also with regard to adoption, see Chapter IV on Adoption.

21. The list of classes mentioned in the book who follow the Aliya Santana Law, is, as has been observed before, (*ante* para 14) not exhaustive or accurate. It would be difficult to give an accurate list as it depends more or less upon the departure each caste might have made during early times.

CHAPTER III.

LAW OF MARRIAGE.

Marriage relations.

22. A chapter on 'Marriage' in a system, where matrimony counts for little in the family relations, would, at first sight, appear to be an anomaly. But this would be true only of the primitive condition of the Aliya Santana people. Marriage now-a-days is as much a living factor and a power in controlling the family relations among them, as it is in any other community, where it is a legal institution. Whatever may have been the custom in early times, it is pretty certain that in Aliya Santana families, marriage is recognised by society for all practical purposes and the connection between the husband and the wife is considered to be as binding and sacred as in any other system. The fidelity of the wife towards the husband and her residence with him like the ordinary members in a Hindu family has become proverbial and has been noticed by all competent observers from Buchanan downwards, so much so, that the anomaly is rather the other way. The absence of any legal

consequences flowing from the matrimonial alliance is only a relic of the past, rather than an index of the present, and in this respect, the social usage may be said to be in advance of the law. The one crucial test that marriage is viewed in such a light, is afforded by the custom, which regards the marriage with the father's brother's daughter as incestuous. The paternal instinct is as strong among Aliya Santana men and the vast amount of influence it exercises upon the parents is to be seen from the attempts made to favour the children in opposition to the members of the family. Dispositions of family property by way of gift and presents and the various subterfuges sought to evade the attacks of the family members, by the Ejamans or managers for the time being, are far too common to be discussed at length.

Traces of existence of marriage custom.

23. The earliest record of the existence of marriage custom prevailing among Aliya Santana families is found in the Bhutal Pandya's Code. In the 16 Kattales or commandments, elaborate rules are given as to the persons competent to give a girl in marriage, as to the conditions under which remarriages are permissible and the penalties of associating with men of inferior caste. Though the rules there drawn up, might, according to our modern notions, appear to be rather lax and insufficient, yet they clearly indicate the consciousness in the minds of the people, of the binding character of the marriage tie. No doubt, the picture of the society wherein such rules find their currency, may be far removed from what we expect of marital relations between husband and wife but in lower classes of society, not to speak of Aliya Santana families, marriage relations are generally of such a nature and

the moral standard is not so high, as in the higher classes. Besides, the author must have been speaking of a remote period, of a period a century or two old, and the changes that have taken place since, have greatly modified the customs for the better. Anyhow, it is well nigh certain that no traces of polyandry and the custom of the wife living in her tarwad and admitting husbands at her pleasure, as is the case in Malabar, have been found and even in Malabar, such traces are fast dying out. (Malabar Marriage Commission Report Page 84).

Buchanan.

24. Next we have the testimony of Buchanan in his work on Mysore, Malabar and Canara published so far back as 1801. At page 213 while giving an account of the Bunts, the chief land-owning class in the district, he says "If a man has a mother's brother's daughter, he must marry her but he may take two or three wives beside. The ceremony is performed by the girl's father or other near kinsman. When a man marries several wives, *none of them can leave him without his consent* but when discord runs high, he, in general sends one of the disputants back to her brother's house and then she is at liberty to marry again. A man at any time, if he dislikes his wife, may send her back to her brother's house and he can do no more if she has committed adultery." Here, it will be seen that the restraint placed upon the wife during her coverture, viz. of living along with her husband, is recognised and what has been said of the Bunts, may be taken to be more or less true of other castes following the Aliya Santana Law. The preference shewn to maternal uncle's daughter to others is due to the circumstance that it secures the affection of the maternal uncle as the father-in-law towards the nephew, while at the

same time, it provides means of support in the family to the daughter. This practice of marriages between the first cousins is so very common in Aliya Santana families, that such unions are expected as a matter of right, wherever they are possible. In a decision book of September 1852, page 12 Mr. Chatfield, the Civil Judge, observes in connection with the management of the family affairs "That in Canara where the wife follows and lives in the house of her husband she has to leave her estate to the management and integrity of her male relations who may easily deceive her of her property."

Anamoly.

25. This conventional mode of marriage, was, however, found inconsistent with the system of enjoyment of family property which traced the degree of kinship through females only, excluding the issue of such marriages, when the attention of the Courts was first drawn to the subject and thus this anomaly was sought to be removed by marriages being totally ignored. In Subbu Hegade *vs.* Tongu* which was a suit for maintenance by a female from the family property and wherein it was contended that the husband was bound to provide the Plaintiff during her coverture according to the usage, the High Court while disallowing the Plaintiff's right to separate maintenance from the family property, observed "that the relation between a wife and her husband is in truth, not marriage but a state of concubinage into which the woman enters of her own choice and is at liberty to change when and as often as she pleases. From its very nature, it might be inferred as probable that the woman remained with her family and was visited by the man of her choice. Though women in Canara do, it seems in some

* 4 M. H. C. R. 203.

1916 M WN. 111 = 39 Mad 957 Chandra v Mathu

1919 M L J 361 Parappa Chetti v Sankunni Menon

1924 M W N. 305 = 46 M L J 324 In re Bharata Ayya

1933 M W N 1276 . K Ramam v A Parvatam

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"A Form of Marriage for persosns following the Marumakkatayam or Aliya Santana Law" in the shape of a permissive Act, it is to be hoped that the leaven thus introduced will affect the whole system in future, and that persons will largely avail themselves of the provisions therein contained.

Form of Marriage.

27. Marriage in the Aliya Santana system, from its very nature, could not be a sacrament as it is among the Brahmins but is a matter of purely civil contract, the violations of the marriage obligations being guarded against by public opinion and conventional rules of morality. The marriage laws, as they are observed by them at the present day, seem to have been imitated from the Brahmins but without the religious element in them. There are no such formalities as the repetition of a Vedic Mantra, the presence of a priest or of the sacrificial *homa* which in the approved form of marriage among Brahmins give it essentially a religious character. There is, however, a semblance to the Brahmanical form in the act of giving the girl by the maternal uncle or the father to the bridegroom, and a counter-part of the pouring of water over the hands of the bridegroom in token of the gift of the girl, in the custom of touching the *Dhare Gindi* in some instances and the pouring of water in some others. Almost all the castes following the Aliya Santana rule of inheritance, it appears, agree in the form which goes to constitute marriage and establish conjugal relations between the husband and the wife, the difference being in the number of festivities and dinners which depend upon the wealth and affluence of the parties concerned. The object of the marriage is to secure prosperous union of the married couple and to ensure posterity to the property of the wife.

Persons to be selected.

28. As under the Hindu Law, the selection of persons to be married is limited by two rules: Firstly, the parties must not belong to the same family, that is, in the sense in which family is understood by Aliya Santana people. The castes are divided into Balis comprising descendants from a common ancestress through females, and the members of the same Bali are ineligible. Thus the marriage between the children of two sisters is strictly forbidden, whereas one between the children of a brother and a sister is permitted, the reason being that the child belongs not to the father's but the mother's Bali. The same rule is also applicable to the remote kindred, the principle being the same. This prohibition extends to certain allied (Kudu) or sub-Balis (vide South Canara Manual, Page 160, and Memorandum of Mr. Ramaiya Punja to the Malabar Marriage Commission). This prohibition is further extended to marriages under the Malabar Marriage Act, Sec. 15, sub-sec. 1, cl. b of which, lays down "that a marriage is null and void, if a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great-great grandfather and great-great grandmother and by reason of such relationship, a *Sambandhum* between them is prohibited by any custom or usage applicable to the community to which they belong or either of them belongs." By this section the prohibition would extend to the father's side through males to the great-great grandfather if there is a custom or usage applicable in the community to which parties to the marriage belong. Thus, according to Aliya Santana usage, marriage is forbidden between two brothers' children, that is to say, between one with his father's brother's

daughter. (Vide South Canara Manual, Page 160, and the memoranda of Messrs. Mundappa Bangera and Ramaiya Punja to the Malabar Marriage Commission). So also the marriage of one with his paternal aunt or other remote ancestor is forbidden by the usages obtaining in the families governed by the system by reason of their affinity to the individual to be married. Such marriages, therefore, among those within the prohibited degrees of relationship either through the father or the mother would not be recognised as conferring any legal right on the husband or the wife and would be no more than mere concubinage under the Act. These Balis are said to be 16, though they are given to be 20 in the South Canara Manual (vide Malabar Marriage Commission Report, Page 166). These Balis are essentially based upon the principle of consanguinity which is more respected among the Aliya Santana families than the principle of affinity which obtains among Hindus ordinarily governed by rules of Hindu Law. These Balis are, it seems, easy of being ascertained, for "one can scarcely be found who does not know one's own Bali by rote. And the heads of caste who preside at every wedding party and who are also consulted by the elders of the boy or girl before any alliance is formed, are such experts in these matters that they decide at once without reference to any text-books or rules whether intermarriages between persons brought before them can be lawfully performed or not." (Vide Malabar Marriage Commission Report, Page 167). Besides, in these days when horoscopes are being cast on the birth of a child, the family pedigree can hardly be a matter of doubt and uncertainty. There cannot be therefore any disagreement about the identity of the Balis, before persons eligible for marriage are selected.

29. Secondly, the parties to the marriage must belong to one and the same caste. Marriages between members of different castes would not be recognised at all by the society and would end in the excommunication, from their respective castes, of the persons concerned. A marriage between two persons, for instance, of the Kelsi (barber) and Madivala (washerman) caste, would be void and would be looked upon with contempt. Even, marriages between those who reside in the northern and southern parts of the district, *i. e.* between Kanarese and Tulu speaking people, though of the same caste are rare. The prohibition contained in these customs is embodied in the provisions of the Act Sec. 3, cl *d*: "The parties must not belong to different communities between the members of which, according to the custom or usage applicable to either, cohabitation is prohibited."

Marriageable age.

30. As to the marriageable age of the parties, there is no restriction as is to be found among Brahmins. Late marriages are the rule though latterly there is a marked tendency among the higher classes towards early marriages. The duty of finding out a suitable match for a boy or a girl falls upon the elders who are either the father, the maternal uncle or the Ejaman of the family to which the boy or girl belongs. (Vide Page 166 of the Malabar Commission Report).

Marriage ceremony.

31. As to what constitutes the marriage ceremony which, according to the usages of the people, completes the marriage-relation between the parties, one cannot do better than quote in full a description of such ceremony given by Mr. Mundappa Bangera in his memorandum to the Malabar Marriage Commission: "If there

is no objection on the score of Bali, and if, in other matters, the elders of the parties agree, a day is fixed for performing a ceremony known as the ceremony of betrothal (Ponnu Pathera of Tulu castes or Nischaya Tambula of Brahmins). On this day, the bridegroom's party (but not the bridegroom) with a number of their friends and relatives, go to the bride's house with a Tali or a Bandi (neck-ornament) and also with music and tom-tom (if the parties are well-to-do in their circumstances); there the elders of both the parties stand up before the persons assembled and exchange plates of betel-leaf and nuts in token of the acceptance of the marriage proposals made to each other, the tali or bandi is then tied by the senior member of the bridegroom's family (Tarwad) or Bali to the neck of the intended bride. Meals are afterwards served to the guests who then depart. By this arrangement, the girl's relations are supposed to have entered on behalf of the girl into an irrevocable contract with those of the boy; and such contracts are rarely, if ever, broken."

"After this is done, an auspicious time is fixed for the marriage. Feastings and rejoicings begin to take place even three or four days before the day on which the marriage is to be celebrated. Each day's dinner is called by a name. Marriages may take place either in the bride's house or in the bridegroom's house or even in a third party's house where there may be a separate couple marrying on the same day. Not only friends and relations but caste-people even from distant parts are invited for the marriage. On the night previous to the day on which the marriage-ceremony is to be celebrated, the bride and her party or the bridegroom and his party and caste-people come in a procession to the marriage-

pandal with music, pomp and splendour varying with the means of the parties concerned. On the next morning, the bridegroom makes a present of a Sadi, a bodice (petticoat) and a handkerchief (these are all of silk, if the parties belong to rich and respectable families), in some cases the bride's father or uncle also at the same time presents a Dhoti or a shawl or a laced turban or a silver or gold waist girdle to the bridegroom. The bride and the bridegroom are then seated together side by side on a bench or chairs covered with a white cloth. The right hands of the bride and the bridegroom are placed one over the other, the headman of the caste holding them together and anouncing at the same time in a loud voice that A, the daughter of R, is given in marriage to B, the son of S, when the father of the girl pours water from a vessel with a spout attached to it called the *Dhare Gindi.* After this, the father or the uncle of the bridegroom makes a gift of money to the bride called "Thirdochchee;" this sum varies from two to five hoons according to the means of the parties. The guests then make presents of money to the couple, and filling their hands with rice from basins laid before the bride and the bridegroom, throw it over their shoulders and heads. This is considered by all Hindus to be the universal matrimonial benediction. And at last, the girl is handed over to the bridegroom's party who take her to their house. If the girl happens to be one who has already arrived at her puberty, a few days after the marriage a dinner is given to a select number of friends and relations; the bride is made to serve food to the bridegroom who makes a small gift of money to her and on that night, consummation takes place. If, on the other hand, the bride is young, another ceremony called "madmale madme"

meaning puberty-ceremony, takes place before the boy or girl is allowed to cohabit."

32. This account differs but little from that of Mr. Ramaiya Punja, except that instead of the pouring of water described above, the *Dhare Gindi* is placed over the joined hands of the married couple and is waved up and down. This rite is known as "Dhare" and forms the principal part of the ceremony. This also tallies with the account in Bhutal Pandya's book where it is commanded that the vessel (*Dhare Gindi*) should only be touched. But it is stated that the practice of pouring water still continues in the Udipi and Kundapur Taluks, and it is only in the Southern and Eastern parts that the practice is discontinued so as to indicate that the wife does not completely pass under the dominion of the husband as under the Hindu Law, but that she still retains her rights in the family. But it is only a local variation which is in itself not very important. What constitutes the marriage tie is "the publicity given to the marriage, the joining of the hands of the bride and the bridegroom, the declaration made at the same time that such a girl is married to such a man before the caste-assembly, and above all, the pouring of water or the touching of the *Dhare Gindi*." The *Dhare* form can be adopted for a man as often as he marries, but the second or any subsequent marriage of a woman cannot be performed with that rite.

Widow marriages.

33. Widow-marriages are permissible under the system, but it seems they are resorted to in exceptional cases, as for instance where the widow happens to be young and possesses no children by her former husband. The ceremony of second marriage is of a shorter duration than the *Dhare* ceremony. "A cloth, and

sometimes a cloth and a bodice are presented by the bride-groom to the bride; man and woman stand or sit on opposite sides of a screen or a cloth held between them; their hands are joined together under the cloth by the headman of the caste, and the wife is enjoined not to call her husband thenceforward by his name, which ceremony is brought to an end by serving meals to the assembled guests." It is singular that no bachelor is allowed to take a widow for his wife under this ceremony, and it is only a widower that can so accept the hand of a widow. Probably this arises from the feeling of delicacy which attaches itself to the first marriage.

Divorce.

34. Divorces among Aliya Santana families are freely allowed, though among the more respectable families, such instances of divorce are rare. The public opinion would seem to act as a sufficient check upon the whims and caprices of either the husband or the wife. It is remarkable how adultery on the part of the wife with men of inferior caste is looked upon by the society under the Aliya Santana system. Bhutal Pandya in his code, lays down strict rules with regard to the conduct of the wife. Chastity of the weaker sex among the lower classes is strongly preserved by means of strong penalties for breach thereof, and even in Malabar, where greater liberty is allowed to women, the several ordeals prescribed for a supposed adulteress to prove her innocence are indeed appalling (vide Ramachandra Ayyar's Malabar Law Manual, page viii). In such cases, adultery on the part of the wife and continued ill-usage on the part of the husband will form the chief grounds for dissolution of marriage. In case of such dissolution, the 'Tirdochchee amount' given by the husband to the wife has to

be returned to the husband to mark the dissolution, and two very interesting cases are mentioned by Mr. Brodie, the Ag. Collector of S. Canara where the fact of the 'Tirdochchee amount' not being so returned, was made the basis for complaining that the marriage relationship did not cease, and that consequently the accused came within the purview of Section 498 of the Indian Penal Code. This view is hardly tenable, as in theory the marriage tie is loose, and could be set aside at any moment by either party at his or her pleasure.

Effect of Malabar Marriage Act.

35. It remains to consider the operation of the recent Malabar Marriage Act upon the existing marriage customs of the Aliya Santana people. The Act leaves a large class of persons untouched and the Act is only permissive in its nature. The preamble to it runs: "Whereas it is expedient to *enable* persons following the Marumakkatayam or Aliya Santana Law of Inheritance to contract marriages which shall be recognised by Courts of Law." From this, it is clear that it is only an enabling Act, *i. e.*, an Act which enables persons who feel they are suffering from certain social disabilities with regard to their marriages, to have their marriages recognised by Courts of Law as legal marriages. It is only this class of persons who so feel aggrieved by the present disabilities and who fulfill the conditions provided for in the Act, that come within the cognisance of the Act. The intention of the Legislature is according to the Government of Madras to provide "a marriage law of such a character which would merely graft upon the Marumakkatayam customs, a method whereby the ordinary legal incidents of marriage could be attached to existing forms of marriage and could in no way offend the feelings of the people and to merely provide a

machinery for securing contemporary and unimpeachable evidence of the fact of a customary marriage and a form to be gone through by either of the parties desiring to terminate the union with the term of probation and with evidence of the fact of the form having been gone through similar to that required to prove contraction of marriage." Those who desire therefore to obtain the benefits of legal incidents attached to their marriages, have to undergo certain forms provided therein, as a condition precedent to have their remedy in law, and unless these forms are gone through, such benefits cannot be claimed. To this class of persons who take care to register their marriages under Sections 5 and 11 of the said Act, the provisions of the Act will be applicable.

36. The existing marriage customs have been respected under the Act, and although a marriage under the Act would not be invalid on the sole ground that the marriage ceremonies were not performed according to caste usages, such objection could be raised by the person interested, before the Registrar within the time prescribed. The absence of the usual marriage ceremonies will, however, furnish some evidence either that the consent of the guardians where the parties are minors, has not been obtained, or that such marriage contravenes some other provisions of Sec. 3 which will render it null and void under the Act. Minority is not defined under the Act for the purposes of marriage, and in the absence of a fixed limit of age, the Indian Majority Act IX of 1875 will apply, and a minor will be taken to mean a person who has not completed the age of 18 years.

37. One important step in the new legislative measure which has to be noticed is that it does not encourage poly-

Restraint on Polygamy.

gamy. It is possible for the husband to contract as many matrimonial alliances as he wishes, but he cannot register all of them at the same time or when the other is in force, and the wife will have to take great care to have her marriage registered lest otherwise she might be superseded by another whose marriage might be subsequently registered under the Act. Of course, there is great room for the husband to ask the Court to dissolve the registered marriage without assigning any reason for his step, but in doing so, there is some check provided for his caprices, in that where a dissolution takes place without the consent of the wife, he will have to maintain her so long as she remains chaste, and has not contracted a second marriage and remains a Hindu. See Sec. 22.

38. The new Act will have conferred upon the parties the status of wife and husband, and the wife and children will be entitled to be maintained by the husband, and in suits for maintenance by the wife or children, all the defences which the husband or the father could plead under Hindu Law, would be open under the Act. It would appear that by children are meant those children who are not able to maintain themselves by reason of some defect of body or mind, for under the Hindu Law, it is only these persons that are entitled to maintenance, as others who are members of the coparcenary would be entitled to a share of the family property (vide Mayne's Hindu Law and usage, 4th Edition para 408). So also, where the children are maintained in their tarwad house, it would form an adequate ground of defence for the father that such maintenance should not be a charge on him or his property. In a suit by the wife

Rights under the Act.

for maintenance, the husband will have to prove adultery so as to disentitle her to maintenance. But under the Hindu Law, the obligation to maintain the wife is absolute; for "whether an unchaste wife can be turned out of doors by her husband, without any provision whatever, remains unsettled. It is stated generally that an unchaste woman may be turned out of doors without any maintenance. But the passages upon which this *dictum* rests, refer to the maintenance either of the wives of disqualified heirs or of the widows of deceased coparceners * * . It appears pretty certain that except her husband or her son no one is bound to keep an unchaste woman alive. But there are contradictory opinions as to whether her husband is not liable to furnish her with a bare sustenance." But this is because under Hindu Law marriage is a sacrament, and the husband and wife are, as it were, parts of the same body, and there is no system of divorce known to Hindu Law. But in a system where divorce is freely allowed and the woman can contract a second marriage during the life-time of her former husband, after the first marriage has been dissolved, the nature of the obligation to maintain the wife would not be so stringent and the proof of adultery would be a sufficient answer to the suit. Similarly, if the wife has left the husband's house without his consent and remained in the Tarwad house, the husband will not be liable; for under the Hindu Law, "as soon as the wife is mature, her home is necessarily in her husband's house. He is bound to maintain her in it, while she is willing to reside with him and to perform her duties. If she quits him of her own accord either without cause or on account of such ordinary quarrels as are incidental to married life in general, she can set up no claim for separate

maintenance," and it is doubtful whether under the Act, a husband will be so liable, even where his consent has been obtained, for the period she remained in the Tarwad house.

Inheritance.

39. Besides the right to maintenance, the wife and children will also be entitled to half the self-acquired property of the husband or the father, in case he dies intestate; and in the event of no member of his *Tarwad* surviving him, they will be entitled to the whole of such property left by him. In the case of an Aliya Santana person, Tarwad will be understood to mean heirs of the acquirer in his own branch. Antamma *vs.* Kaveri*. Such property in the hands of wife and children would seem to retain the character of self-acquired property, and would not lapse to the Tarwad after their death, for it would devolve upon the widow and children in equal shares, Sec. 23. For the same reason, the property so acquired would be available as assets for debts in the hands of creditors.

40. The husband, on the other hand, will derive no particular right from such marriage, except that in the case of intestacy of the wife, her self-acquired property would devolve upon the husband, in the event of there being no children and no member of the Tarwad surviving her. The tarwad rights are left intact, except that its rights to the self-acquired property of a junior member of the family are reduced to a half, which would otherwise have lapsed wholly to the tarwad in the case of Malabar Law and to the immediate heirs under the Aliya Santana Law. Antamma *vs.* Kaveri†.

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*I. L. R. 7 Mad. 575. † I. L. R. 7 Mad. 575.

CHAPTER IV.

LAW OF ADOPTION.

41. Adoption in the Aliya Santana system does not occupy so prominent a place as it does in Hindu Law. Religious considerations apart, the nature of the joint family in the Aliya Santana system is such that adoption is rarely practised. An Aliya Santana family in its full form, consists of so many different branches of families, each branch headed by a female, who becomes a fresh stock of descent, that the possibility of the family line becoming extinct, is reduced to a minimum. This arises out of the joint corporate character of the Aliya Santana family and the indivisibility of the family property. Though the branches live separate, for the convenience of the members, that would be viewed only as a temporary arrangement which does not sever their joint interests. "In some cases where the family has become very numerous and owns property in different districts, the different branches can become permanently separated in estate but this can be only done by common consent. No one member, nor even all but one, can enforce a division upon any who objects" (vide Mayne, Para 218). Consequently, occasions for adoption are very few, and it is in only rare cases that the practice is resorted to. Even under the Hindu Law, adoptions would have been rarely heard of, were it not for the effect they have upon the devolution of property. "The effect that every adoption must have upon the devolution of property causes every case that can be disputed to be brought into Court. Fresh rules are invented or imagined. Notwithstanding the spiritual benefits which are supposed to follow from the practice, it is doubtful whether it

would be ever heard of, if the adopted son was also not an heir. Paupers have souls to be saved, but they are not in the habit of adopting." (vide Mayne, Para 92, 4th Edition.) So long as there are heirs to the property, no need is felt for adoption; it would be simply adding to the number of mouths to be fed at the family expense, and it is only when all heirs to the property, males or females, are diminished to one, that recourse could be had to adoption.

Adoption invalid during the life-time of another heir.

42. It is therefore a settled principle in Aliya Santana Law that none but the last surviving member can make a valid adoption in an Aliya Santana family. This principle was laid down by the Sadr Court so far back as 1859. In Koti Hegade *vs.* Manju* it was held that female under the Aliya Santana Law, cannot adopt if she have male issue living, and the same principle has been enunciated more strongly in the later decisions of the High Court. In Chikka Shetti and Abbakku *vs.* Achappu and others,† known as the Harekal Guttu Case, the facts were briefly as follows :—

The family known as the Harekal Guttu house lived in four separate dwellings. In 1830, one Chikkappa Rai was recognised as interested in the family. In Original Suit No. 332 of 1831, one Munda Bhandari, a member of the family, obtained a decree for partition, but renounced the benefit thereof by a Karar brought about in the family in 1836, by which it was provided that the family should live in union; but the Karar was not subsequently acted upon. In 1859, Chikkappa Rai adopted the Appellants, and Respondents, who were other members of the family, sued in Original Suit

* Appeal Suit No. 138 of 59. † Unreported S. A. 1175 of 83, 17—11—84.

20 of 1859 to set aside the adoption and to enforce the Karar. Chikkappa Rai admitted the Karar but repudiated its binding character. The Principal Sadr Amin dismissed the suit, holding that the Karar had not been acted upon, and that the adoption was valid. In appeal, the decree of the Lower Court was confirmed, but the question of adoption was left open. After Chikkappa Rai's death Respondents obtained a certificate to collect the debts due to him, and sought to dispossess the Appellants, but the Magistrate confirmed them in their possession, and the present suit was brought to set aside the adoption and to recover possession of the property. It was held by the High Court that it was not competent for an individual member governed by the Aliya Santana Law to make an adoption while there still remained females or a female capable of child-bearing, and that the family Karar was to be enforced. The limitation in the above decision that the female must be capable of child-bearing is not very clear, for an adoption would be equally invalid if there should be a male member living in the family at the time of the adoption. This was so held in Chendu *vs.* Subbu.* There a mother made an adoption while her son, who was a leper, was alive. The question was, whether the adoption made under these circumstances was valid, and whether the son could question the adoption. The High Court (Muttusami Ayyar and Shepherd, JJ.) held that the adoption was invalid, and referred to the earlier case of Koti Hegade *vs.* Manju decided by the Sadr Court, in support of their decision. Their Lordships observed: "We are unable to see why a physical infirmity which unfits a man to be a Karnavan, should further deprive him of other rights attached to the status which

* I. L. R. 13 Madras 209.

he enjoys in the family. The question is one of Aliya Santana usage, and in the absence of any authority warranting the adoption during Plaintiff's life-time, we are not at liberty to sever from his status one of its legal incidents, viz. the right to bar an adoption by his mother." It is plain that under the Hindu Law, the son under such circumstances would be prevented from objecting to the validity of the adoption, since he himself would be incompetent to perform those ceremonies for the spiritual benefit of the father which the adopted son can perform. But their Lordships refused to extend the analogy of Hindu Law and preferred to base their decision on usage prevailing in the system.

Adoption wholly secular.

43. It follows that adoptions in Aliya Santana families are singularly free from the restrictions contained in Brahminical text-books, and that the rules which limit the selection of an adopted son have no application whatever to adoptions under the Aliya Santana system. The motive for adoption in Aliya Santana families is entirely secular, and the only object with which an adoption is made, is to secure an heir to the family and to perpetuate the family lineage. This motive was also, as has been amply shewn by Mr. Mayne, undoubtedly the origin of adoption amongst all the early races, but in Hindu Law, the religious theory which was an after-development, gradually supplanted the original idea, and has come to be looked upon as the sole basis for adoption. The adoptions in Aliya Santana families are moreover of females* unlike those in Hindu Law. This system of adopting females can be only intelligible when we remember the constitution of an Aliya

* S. A. 162 of 63, 24—10—63.

Santana family. Females alone being capable of transmitting their interest in the family property to their issue, the family line could be continued and the family property preserved from escheat to the Crown, by only one device, and that is, by adoption of females. Hence Rule 14, cl. 3 and 4, of Bhutal Pandya "that on failure of heirs, a girl of the same Bali that may be fostered shall be considered an adopted child" (vide Gopal Krishna Pillay's translation of the Code of Bhutal Pandya, Page 12). It is however made incumbent that the child adopted should be of the same Bali, and this condition is imposed in order to simulate the reality as much as possible. Whether an adoption of a girl from a different Bali would be invalid, has not yet come up for decision before the Courts, and perhaps the identity of Bali would not be considered such an essential as to make such an adoption void *ab initio*. The restrictions with regard to the age of a boy in the matter of adoption which are found in Hindu Law would be out of place in a system which does not base its practices upon religious considerations and which rests purely on conventional grounds. No ceremony like the 'Datta Homa' is essential for an adoption. Mere fosterage of a female child of the same Bali with the intention of continuing the family line would amount to an adoption. In Jacku and others *vs.* Abbakku and another*, the last male holder Rachu Banta, who was the only representative of his branch, had adopted the Plaintiff, who was of the same Bali as his foster-niece, to continue his branch. It was held by the High Court that such fosterage was equivalent to an adoption under the Aliya Santana Law, and the document in the case in favor of the Plaintiff which contained these words:

* Unreported S. A. 649 of 85, 13—11—85.

"She should be my representative in order that the Daiva Deva Kattales (family ceremonies) may be rightly conducted and that she and her posterity should enjoy the property" was held not liable to be impeached.

Result of adoption.

44. As to the result of adoption in the Aliya Santana system, adoption would naturally sever the connection of the adoptee from the natural family, and would confer upon the adoptee, only the rights of the adopted family. This was so decided as early as 1851 and 1855 (vide Page 162 of the Zillah Court decisions of 1851, and Page 37 of the Sadr Adalut decisions of 1855). In Chandaya Hegade *vs.* Bhadraya Ballal, where a person not the lineal heir was appointed to the Putta of the Kulur Beed, the Civil Court, acting on the analogy of adoption, held that the person so appointed forfeited all his rights in his natural family, acquiring in lieu thereof a full right and title to the Putta (vide Decree No. 57 of 1851 and 52 of 1850 of the Zilla and Sub-Court decisions, 24—11—1851), and this was confirmed in appeal by the Sadr Court in A. S. 68 of 1855. These decisions were followed in Timmaya Boliya and others *vs.* Deju*. But in a later case, Sadiya Shetti *vs.* Krishna Shetti†, it was held that adoption of a member of one branch by the other branch, conferred on the adoptee a status in addition to that which she had at the time, by making her a member of both the divided branches, but the High Court declined to lay down the principle as a matter of general law governing adoptions in Aliya Santana families, and stated distinctly that in the peculiar circumstances of the case, where there was overwhelming evidence of the adoptee being treated

* A. S. 166 of 87, 29—8—87. † Unreported S. A. 1585 of 94, 2—4—95.

in the natural family as a member possessing rights therein, it was not possible to say that she renounced all her rights in the natural family. Such a state was considered not inconsistent with the law of adoption obtaining in Aliya Santana families, and their Lordships compared it to the Kritrima form of adoption under Hindu Law, where the adoptee still retains all his rights in the natural family.

CHAPTER V.

CONSTITUTION OF AN ALIYA SANTANA FAMILY.

Comparison with Hindu family.

45. The constitution of an Aliya Santana family may be best described by the striking contrast it presents to the ordinary undivided family governed by Hindu Law. An ordinary undivided Hindu family governed by Mitakshara consists of members who by their very birth acquire proprietary interest in the family property and who transmit their rights to their issue in the male line, who become coheirs along with the rest of the undivided members, "until by the death of all the others without descendants in the male line to the third degree, he has, or he and they have, by survivorship acquired the entire right to the heritage, so effectually as if the estate had passed upon an actual partition with the coheirs" Yenumula *vs.* Ramandora*. The same definition in a slightly modified form with regard to the transmission in the family property in the female line could be laid down for an Aliya Santana family, subject of course to the qualification of the principle of non-

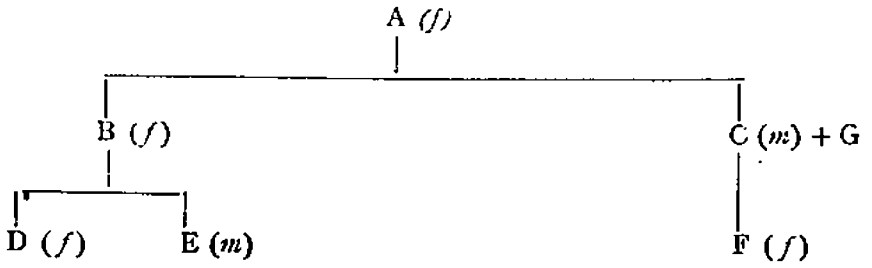
* 6 M. H. C. R. 94, 106.

division and of non-recognition of the relationship to the third degree to the common ancestor. In fact, the great peculiarity of an Aliya Santana family is the descent of property in the female line, the direct opposite of what constitutes a Mitakshara family. Woman in an ordinary Hindu family does but occupy a very subordinate place, and has no rights whatever in the property to transmit to her issue. Her rights, if at all, are confined to her *Stridhanam* and to rights which she may have acquired through males either as daughter or widow. But the very nature of her rights is determined by the extent of her limited interest in the property derived by her. In most cases, she has no more than a life-interest in the property except where such right is expressly extended to absolute power of disposal. In an Aliya Santana family, on the other hand, no such restriction could be predicated of her except what is incidental to the very nature of the property she inherits, *i. e.*, non-division. In short, it may be said in a sense that women in an Aliya Santana family occupy that position which males occupy in a Mitakshara family.

Definition of Aliya Santana family.

46. An Aliya Santana family may be then defined to be a group of members in whom is vested jointly the right to family property and who transmit this right to their issue in the female line, who become equally interested in the joint property with the rest of the family members until by the death of all the other descendants in the female line, she or he becomes entitled to the whole property by survivorship. Survivorship is the rule, and no member can be said to have any definite share in the property since according to the Aliya Santana Law the property is indivisible. Survivorship and

succession in the female line may be said to form the two chief characteristics of an Aliya Santana family. The position may be thus illustrated:—



Suppose A, a female, to be the original ancestress of an Aliya Santana family, and that she dies leaving behind her B, C, D, E and F. Of these, from the above principles, it is evident that only B, C, D and E can claim to be members of the family, and not F; for C a male cannot perpetuate the lineage, and F, though a daughter of C, must inherit, according to Aliya Santana rules, if at all, in her mother's family, *i. e.*, the family of G which is a different family altogether from that of A. None of these persons B, C, D and E singly can predicate of the property left by A that he or she possesses any specific share or can pretend to dispose of it in any way. The interest which every one of these possesses, may be enlarged or diminished by the diminution or increase of the number of members by their deaths or births in the family, until at last, by the death of all the other members, the entire property is vested by survivorship in a single individual.

Doctrine. Females-proprietors.

47. The perpetuation of lineage in the family in the females of the family, and the devolution of property upon the descendants of such females gave rise to a conception that females alone are the sole proprietors of the family property in

Aliya Santana families and that males have no more than a bare right of maintenance from the family property. Thus in A. S. 82 of 1843, the Civil Judge Mr. Findley Anderson says: "It is clear that the females, as being the channel through which succession runs, are looked upon as vested with the property * *. The Pandit in reply to queries put to him, has stated that by the analogy of Hindu Law, he considers the males entitled to an equal share with the females. But this is not the case. An equal division amongst sisters in Aliya Santana family corresponds by analogy with equal division amongst brothers in a Hindu family. It is clear that if males were entitled to a share in the family property, the portion allotted to them, must of necessity at their death go out of the family, and that is against the theory of Hindu Law, and much more especially of the Aliya Santana Law as laid down by Bhutal Pandya. * * The male members have only the right to live and be maintained on the portion of the property which may be allotted to the share of their female ancestors." So also, in Decree No. 46 of 1851,* it is stated that the "female alone inherits, and the male, who can claim subsistence, has no power whatever to alienate the property." This doctrine was emphasised in the two earlier decisions of the High Court; viz: Munda Chetti *vs.* Timmaju Hengsu† and Subbu Hegade *vs.* Tongu.‡ In O. S. 13 of 1885, Mr. Venkobachariar, the Sub-Judge, remarks: "If this view be correct, *i. e.*, that all the rights are derived from and transmitted through females, the fact that males live in the family house and are entitled to maintenance will not make them joint-owners with the females in the family in the same way as females in Hindu families will not be co-owners with the males."

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* 28—9—52. † 1 M. H. C. R. 380. ‡ 4 M. H. C. R. 196.

Modern view—Males and Females proprietors.

48. But the more recent doctrine is that there is no such distinction between the males and the females in the family as regards the proprietorship of the family property, and that males as well as females are equally entitled to the property, and are joint owners thereof. This was so held in Devu *vs.* Deyi.* In discussing the relative rights of males and females in an Aliya Santana family, their Lordships (Muthusami Ayyar and Hutchins, JJ.) observe: "We are aware that the Court then observed that in Canara 'females alone are recognised as proprietors of the family property,' and that Mr. Justice Holloway also referred to the authority of Mr. Strange, and quoted with approval his statement, that the doctrine that all rights to property are derived through females, is more consistently carried out in Canara than in Malabar. But it must be borne in mind that these general observations were made without special reference to the question now at issue, but with reference to the question of partition among males and females, which cannot certainly be reconciled with the principle that all rights to property are derived and transmitted through females. It may well be that a male may be Ejaman, though he may not be permitted to insist on partition, lest the family property may in part become his separate property, liable to be diverted from the family by alienation, and even the proposition that females are the sole proprietors of family property can hardly be considered strictly accurate. How are we then to account for the right to maintenance vesting in males? It seems to us to be more correct to say that the property vests in the

* I. L. R. 8 Mad. 353.

whole family consisting of males as well as females, though from the fact that marriage is not a legal institution, influencing the devolution of property, all rights are derived from and transmitted through females." This was followed in Aitappa *vs.* Dumanna* where their Lordships observe: "It is not strictly accurate to say that in an Aliya Santana family, females are the sole proprietors of the family property, and that males are merely entitled to maintenance. The property vests in the whole family consisting of males as well as females." See also Abbakku Shettati *vs.* Ugappu and others†. As was pointed out in Kunhamad Hajee *vs.* P. P. Kuttoth Hajee‡ with regard to the Malabar tarwad, 'the family and not the individual is what we may term the social unit.'

49. After having ascertained who constitute the members of an Aliya Santana family, it will be convenient to consider what are the rights of the members, first, in relation to the family, and secondly, in their relations to third parties.

Rights of members in the family.

50. As regards the relations of the individual members to the family corporation, it is settled that the several members are entitled to no more than residence and support from the family so long as they remain and work in the family house. But if one should voluntarily leave the family house for some other place, it is to his detriment, and he cannot claim maintenance from the family, since it was his own look-out to have left the family house. This necessarily follows from the indivisibility of the family property. "The preservation of the unity of the family being the only effectual mode of secur-

* Unreported S. A, 1505 + 1506 of 1888, 10—9—89. † Unreported S. A. 231 of 1891, 26—11—91. ‡ I. L. R. 3 Mad. 169.

ing to the members severally a full share of the beneficent enjoyment of the joint estate, the obvious effect of allowing one or more members to quit the family and live apart on a portion of the income of the estate sufficient to support a position like that enjoyed by the members would be to reduce the benefits of the family in a greater or less degree, according to the number of members who might choose to live separately on such allowances and nearly as much so by apportioning shares of the corpus of the property on a division." The case in which the above principles were enunciated was one cunningly devised to defeat the operation of the law of non-division which was for the first time broadly laid down for Aliya Santana families in Munda Chetti *vs.* Timmaju Hengsu.* It was a suit for maintenance by a woman against the family during her residence with her husband. The High Court accordingly observe: "It seems probable that claims of this kind have been made only since the decision in the case of Munda Chetti *vs.* Timmaju Hengsu, settling the law in regard to the non-divisibility of the family property at the suit of one member."†

Misbehaviour.

51. This right of support and residence in the family house cannot in any way be defeated or interfered with by the Ejaman of the family. Even misbehaviour on the part of a junior member towards the Ejaman or other members of the family would not disentitle him, since if the Ejaman could be allowed to refuse maintenance on such pretexts, it would result in the exclusive possession of the family property by the Ejaman and the junior member would be deprived of a portion of the income of the property to which he is entitled. In the same way acquisition

* 1 M. H. C. R. 380. † 4 M. H. C. R. 196.

of separate property by an individual member would not prevent him from the enjoyment of the joint family property, since such a course would block the way to individual industry by depriving him of his family rights. See P. Teyan Nair *vs.* P. Raghavan Nair.* Also Appeal against Order No. 137 of 1886, Subbai Shetti *vs.* Parameshra Shettati†. Much more so would it be in the case of an individual member who is rendered weak either by old age or sickness. If however an individual member of an Aliya Santana family is compelled to leave the family house through the caprices of the Ejaman, he is entitled to separate maintenance, for the caprices of the Ejaman cannot be allowed to stand in the way of the inherent right of the member who is separated from the family. This principle was made an exception to the general rule laid down in the 4 Madras case, and it is held that separate maintenance should be awarded in exceptional cases. Peru Nayar *vs.* Ayyappan Nair‡.

Convenience.

52. But where convenience or necessity has assigned different places to the several branches of the family, separate maintenance could be allowed to the members living in those places; for in reality they are living only in those houses on account of the arrangement made for the benefit of the family. C. K. Nalla Kundivil Pavadi *vs.* C. K. Chatu Nambiar§. Accordingly in a suit for arrears of maintenance by twelve junior members of a Malabar Tarwad who lived apart from the family house, they were given a decree for the arrears on the ground that it was apparently in accordance with the Karnavan's wishes who

* I. L. R. 4 Mad. 471. † 4—3—87. ‡ I. L. R. 2 Mad. 282.
§ I. L. R. 4 Mad. 169.

pleaded that he had provided for them adequately. I. L. R. 12 Mad. 205. "Where the income is insufficient for this purpose, the Karnavan, must with due regard to the interests of all, look to the private means of each", Thayu *vs.* Shungunni.*

Rights in relation to 3rd parties.

53. As regards their rights in relation to third parties, one could deduce them from the general rule of the indivisibility of the common property. They cannot contract debts, make alienations or effect any transactions so as to bind the family property, either jointly or severally. For their share in the family property is incapable of being determined, as "the law governing the property of a Tarwad has not reached the same stage of development as the law regulating the joint property of a Hindu family. Not only in the former is succession traced through females, but the property is indissoluble so that the members of the family may be said to have rather rights out of the property than rights to the property (Mayne). It is not an uncommon practice that the conveyance of lands purchased is taken, not in the name of any member of the family, but in the name of the family deity. The *family and not the individual is what we may term the social unit* * *. The individual right of the members is so feeble that it is not competent to any one of them to insist on a partition. The males take interests in the Tarwad property which endure only for their lives, and do not pass to their offspring, nor are available for the satisfaction of their private debts." Per Turner C. J., Kunhamad Hajee *vs.* Kuttiath Hajee†. Hence in a suit to recover possession under a conditional sale-deed executed by the junior members alone to redeem a mortgage

* I. L. R. 5 Mad. 71. † I. L. R. 3 Mad. 169.

executed by the senior members, the District Judge Mr. W. J. Tate refused to recognise the conditional sale-deed executed by the junior members, holding that if the junior members were permitted to deal with the family property at will and without reference to their Ejaman, even supposing that their transactions were entered in good faith for the benefit of the family, the family system, which has for its head a duly selected and recognised member, would become unworkable at once, and consequently that Plaintiff could not recover. Vasteva Bhatta *vs.* Dumalu *alias* Ponnappu and others.* But if there are separate assets belonging to the borrowing member, the debts contracted by him would be a charge upon the assets, and the assets would enure for the benefit of the creditor. Rayaruppu Nambiar *vs.* Kelu Kurup†.

Right to see that no property is wasted.

54. Though the individual right of the junior members is an undefinable share of the collective right of the whole family, yet a member has a right to see that the family property is not wasted by the Ejaman or the manager of the family by indiscriminate acts of alienation or by recklessly contracting debts. Such acts could be questioned by the family members, and if the transactions are found not for the benefit of the family, they could be set aside at the instance of any family member. "The right so to set aside the sale is not that of any individual member of an Aliya Santana family, but it is the right of the family which the individual is taken to represent." Byari *vs.* Puttanna.‡ Nay, "if any of his acts have been done *mala fide* they can be questioned by the members of the Tarwad, and *he* (Ejaman) may be

*A. S. 193 of 1889 15—12—90. †I. L. R. 4 Mad. 451. ‡I. L. R. 14 Mad. 38

removed for mala fides in his acts, or for his incompetency to manage and other causes" Vernakot Narayanan Namburi *vs.* Vernakot Narnayanan Namburi.* For as stated before, "the property vests in the whole family, consisting of males as well as females, though from the fact that marriage is not a legal institution influencing the devolution of property, all rights are derived from and transmitted through females." Devu *vs.* Deyi.†

Persons entitled to be Ejaman or Karnavan.

55. From this, it necessarily follows that in a family system like an Aliya Santana family or a Malabar Tarwad, very large powers are vested in the Ejaman or Karnavan. The corporation can speak, so to say, through its accredited head and representative, the Ejaman or Karnavan. But before discussing the status of an Ejaman or Karnavan, it would be expedient to enter on a preliminary point as to who is entitled to that position, since from the vast powers attaching to it, it becomes the height of ambition of every individual in an Aliya Santana family to secure that place for himself. The text of the Bhutal Pandya in this connection is as follows:—

"That the eldest female the eldest male children of the senior and junior maternal aunts, shall stand entitled to *Ali Uli.*" Rule XIII cl. 1.

Senior male or females.

56. It should be remembered in this connection that there is no such principle as representation as is found under the Mitakshara and the question of succession may be said, in general, to depend upon the seniority in age of the person entitled to be the Ejaman. This was so decided in

* I. L. R. 2 Mad. 328. † I. L. R. 8 Mad. 357.

Timmappa Hegade *vs.* Mahalinga Hegade.* The contest was between two male members, descendants of the senior and junior branches, in respect to the office of Pattam. It was held that "the distinction between one branch and another in regard to an individual right is hardly reconcilable with the continuing status of non-division and the equal community of interest of all the branches." See also Duggamma *vs.* Annu Bhatta.† From the inclination, however, to construe the rights of females liberally from the fact that all rights are derived and transmitted through them, it would appear that the decisions are not uniform and the question is still held to be *res integra*, depending upon the usage in each particular family. Devu *vs.* Deyi.‡

57. In the earlier decisions which came up before the Zilla and Subordinate Courts the tendency was to view the senior male in the family as the Ejaman, as it was thought more natural for a male to conduct the management than a female. Thus in Sankappaya and another *vs.* Anthoo and another§ Mr. Chatfield, the Civil Judge, observes: "In Malabar where similar laws exist, the residence of females in their ancestral homes, render it difficult for such irregular transferences being made, but in Canara where the wife follows and lives in the house of her husband, she has to leave her estate to the management and integrity of her male relations who may easily deceive and alienate her property;" and again in Panchoo and Duma *vs.* Basava Shetti and others,¶ Mr. Anderson remarks: "This claim has now been brought forward to the common custom in the Zilla that when the male members

* 4 M. H. C. R. 28. † S. A. 545 of 1870, 23—6—71. ‡ I. L. R. 8 Mad. 353. § No. 46 of 1851, 28—9—52. ¶ No. 301 of 1850, 30—10—51.

of a family who manage all its affairs, have been defeated at law, the female members as a last resource step forward and set up their claims, on the ground of the Aliya Santana system which obtains in their families." See also Maire *vs.* Sankoo Mada and others.*

58. But from the view which prevailed at one time (*ante* para 47) of the larger rights owned by the females and the inclination to suit the practice to the theory, it was persistently maintained for some time that the Ejaman is ordinarily the senior of the female members. Tirumale *vs.* Dhurma Pujari and others.† Mr. Justice Best, the then District Judge of South Canara remarks in his finding to the High Court,‡ "Such is frequently the case when males are entrusted with the management of the property in these Aliya Santana familes, as they have but a life interest in the family property and are under strong temptation to take advantage of their own position to benefit their wives and children. In 1 M. H. C. 380 Messrs. Frere and Holloway declared, two learned Judges who had had experience of this west coast, that among Aliya Santana families of this District 'females alone are recognised as the proprietors of the family estate and that the property vests in the female thus more consistently carrying out than in Malabar the doctrine that all rights to property are derived from females.' A lengthened experience of this District has satisfied me that the two learned Judges above named were not mistaken in their enunciation of the law upon the subject and such being the case, it seems to follow that the person legally entitled to the Ejamanship, would be one of those proprietors. As to the argument derived from males being found in manage-

* No. 196 of 1851, 10—6—53. † S. A. 484 of 70. ‡ S. A. 1505 of 86.

ment, this proves nothing at all. As males being more free to to attend Courts and Kutcheries, it is but natural that they should be entrusted by the *de jure* Ejaman with the external management and it is to be noted that the males so found managing are frequently not the senior members of the families. To prove that males have a right to the management merely because of their seniority and independently, of the consent of the proprietors, it must be shewn that they have acted independently and against the will of the senior male and a case of this kind has never come to my notice." These observations were made after the decision of the High Court in Devu *vs.* Deyi* but the High Court (Collins C. J. and Wilkinson J.), in second appeal where these remarks were made, held that no sufficient case had been made for the removal of the Ejaman who had held the position for 29 years, and that the question as to whether the 1st Defendant was the *de jure* Ejaman did not arise in the case.. They approved of the case in Devu *vs.* Deyi and reiterated the opinion that the property vests in the whole family, males as well as females. Aithappa and Mundappa (Defendants) *vs.* Dumanna and others.† The leading case on the point therefore may be taken to Devu *vs.* Deyi‡ The suit was brought by Deyi and Ammu, two females, against Devu Shetti the senior male member, and his wife and son, to remove him from his position as Ejaman and to recover the family property. The allegation of fraud and malversation not having been proved against the Ejaman, the question directly arose, whether it is the senior member, male or female, or only the senior female, that is entitled to be the Ejaman of

* I. L. R. 8 Mad. 353. † S. A. 1505 + 1506 of 1888, 10—9—89.
‡ I. L. R. 8 Mad 353.

the family, and the High Court, after a full review of all the authorities bearing upon the subject, came to the conclusion that the question was not concluded by authority and could not be determined without evidence of usage. In Venku *vs.* Manho and others,* the High Court (Kindersley and Tarrant JJ.), found that the 1st Defendant who was a male, had been for some years the actual manager and had been recognised as such by the Revenue Authorities, and that the previous manager had also been a male, and they therefore held that the management vested in the 1st Defendant, the eldest member. In Subbai Shetti *vs.* Manjamma Shettati and others,† the Appellant pleaded a custom by which the senior female was entitled to be the Ejaman of the family in preference to the senior male, while the Respondents contended that there was a special custom in favour of management by males. The High Court held that neither party had succeeded in proving their plea and that therefore no usage had been made out either way. It may be pointed out, that a dispute can only arise where the male happens to be the eldest member in the family. For, where the eldest member is a female, her right to the Ejamanship is indubitable. In Mahalinga *vs.* Mariyamma,‡ it was held that "though it was not yet considered settled whether the senior female might not exclude the senior member of the family from management, if he is a male, still it was never doubted that the senior member, if a female, is entitled to Ejamanship. The Aliya Santana system of inheritance as well as the Marumakkatayam usage has probably originated from a type of polyandry which prevailed in ancient times and

* Unreported S. A. 174 of 1883, 27—11—83. † Unreported S. A. 432 of 1886. ‡ I L. R. 12 Mad 462.

the natural result of that system would lead to the senior female being the Ejaman of the family (2 M. H. C. R, 110)." Whenever the question arises again, the tendency will probably be to favour the rights of the eldest member, whether male or female, in view of the doctrine enunciated that the property vests in the whole family, males as well as females.

Powers of a Ejaman or Karnavan.

59. It may be wondered at, that the place of a Ejaman should be so much coveted in Aliya Santana families as to occasion a prolonged course of litigation in Courts, ruinous to the parties concerned. But the powers of a Ejaman are so vast and varied, that there is a good deal in trying to secure the position. The Ejaman for the time being, is the first in rank in the family. To him all the members look for their maintenance and support, and on him are bestowed all the honours due to the family. He has the right of controlling all its affairs and he alone can enter into relations with third persons and deal with them. His status in the family is his birthright, and his authority is not one delegated to him by consent of the rest of the members. He is not accountable to the family for what he has spent, for he is under no obligation to economise or to save. He possesses much more power than a manager of a Hindu family in regard to the family property. Too numerous are the decisions defining the position of a Karnavan and his powers, and what has been propounded with regard to the powers of a Karnavan applies equally to the Ejaman of an Aliya Santana family. The importance of the subject merits a fuller detail of the exposition of the law governing the subject.

60. In Eravanni Ravivarman *vs.* Itappu Ravivarman* a Karnavan's position is thus described:—"In such a state of property as that of Malabar, there must be a constant conflict of interest with duty. This however, throws upon the Courts, in case of such conflict, the duty of checking acts referable to interest of that character, but it by no means justifies the treatment of the Karnavan as a mere trustee, officer of a corporation, or other person to whom he has been likened. The law in this case as in so many others has suffered from the pressing of a false analogy. The person to whom the Karnavan bears the closest resemblance is the Father of a Hindu family. Like him, his situation as head of the family comes to him by birth. He should certainly not be removed from his situation except on the most cogent grounds. The office is not one conferred by trust or contract, but is the offspring of his natural condition. Expediency speaks the same language as law. Benefit seldom accrues to a family or an institution from removing one man and putting in another." The same view in more explicit language is thus expressed in Vernankot Narayanan Namburi *vs.* Vernankot Narayanan Namburi:† "Under Malabar Law, the eldest male member of the Tarwad is the Karnavan. To him is vested actually, though in theory in the females, all the property, moveable and immoveable, belonging to the Tarwad. It is his right and duty to manage alone the property of the Tarwad, to take care of it, to invest it in his own name (if it be moveable) rather on loans or on Kanoms or other security or purchasing in his own name lands and to receive the rents of lands. He can also grant the land on Kanom by his own act or an otti

* I. L. R. 1 Mad. 353. † I. L. R. 2 Mad. 328.

mortgage. He is not accountable to any member of the Tarwad in respect of the income of it, nor can a suit be maintained for an account of the Tarwad property in the absence of fraud on his part. The rules of English Courts of equity in equity cases as to the *cestui que trusts* being parties to suits, by or against trustees, by or against strangers, do not apply." With the exception of the management vesting in males in Malabar, what is stated here seems equally to hold good with respect to the Ejaman of an Aliya Santana family.

Right to Kudtala.

61. The Ejaman therefore is the person who is entitled to the Kudtala (Revenue registry) of the family property in his name, and suits for change of Kudtala will lie. The right to Kudtala depends more upon title to the property than upon possession, for if the latter were the case, a mortgagee, lessee, or even a trespasser might be held entitled to Kudtala as against the real owner. Dejappa Hegade and others *vs.* Venkatramana Hadapa.*

Ejamanship—a Personal Right.

62. Karnavanship or Ejamanship is a personal right and it cannot be assigned to a stranger either permanently or for a time. "If delegated at all, it is capable of delegation only to a member of the Tarwad, the principle being that the *de facto* manager thereby assists the Karnavan during his pleasure aud is entitled to do so by reason of his connection with the Tarwad and his interest in the property." Per Collins C. J. and Muthusami Ayyar J., in Chappen Nair *vs.* Assen Kutti.† In such a case, it is competent for the Karnavan to revoke that agency and require that the property so in the member's control and management, be replaced under the

* Unreported S. A. 1174 of 1893, 3—12—94. † I. L. R. 12. Mad. 219.

Karnavan. Govindan *vs.* Kannaran;* Mahalinga *vs.* Mariyamma.† Though the assignment of the right of Karnavanship cannot be made in favour of a stranger and if made is void, there is no objection to give him a limited power as agent over a specific property subject to the general control of the Karnavan. Chappan Nair *vs.* Assan Kutti.‡ But if there is a family arrangement in accordance with which a junior member conducts the management of the family property, the Ejaman cannot arbitrarily revoke such management. In Devu *vs.* Deyi§ it was found that there was a family arrangement come to, to which all the members were parties, whereby it was agreed that the senior male *i. e.* the Defendant should enjoy possession of the land and protect the females, and it was held that the senior female, assuming that she was the *de jure* Ejaman, could not arbitrarily revoke this arrangement. So also in Kunha Adyantaya *vs.* Subba Adyantaya,¶ the Plaintiff sought to restrain the 1st Defendant, a junior member, from managing the family properties. One of the properties was mortgaged usufructuarily by the Plaintiff, the Defendant and another member to one Manjanna Bunga for Rs. 3,500, and the same was taken on lease by all the three persons till the expiry of the usufructuary mortgage. It was provided in the deed of mortgage that the 1st Defendant should manage the properties, subject to the terms of the lease and redeem the mortgage at the expiry of the stipulated period and the 1st Defendant was accordingly in possession as manager. It was held that the family arrangement had consideration for it, in that it was made a condition in the mortgage-deed, and it was

*I. L. R. 1 Mad. 151. †I. L. R. 12 Mad. 462. ‡I. L. R. 12 Mad. 219. §I. L. R. 8 Mad. 353. ¶Unreported S. A. 910 of 1894, 5—10—1894.

not a mere delegation of authority as Ejaman. It was not therefore open to the Plaintiff to recede at his pleasure from such an arrangement and if at all, it can only be set aside for fraud. See also Pommadi *vs.* Ramappa Ballala;* Manjaya Shetti and others *vs.* Daramma Shettati and others.†

Limitations on Karnavan's power.

63. Besides these limitations on the Karnavan's absolute powers imposed by voluntary acts of parties, there are certain others which are inherent from the very nature of the property he enjoys. For instance, "the authority of Karnavan to make alienations of the immoveable property stands on a different footing from his power to pledge the credit of the family. The former power is not unlimited. The assent of the other members of the family must be shewn to the particular alienation. The assent of the senior Anandravan is regarded as sufficient evidence of the assent of the family. The Karnavan is therefore not the agent of the family to make alienations but must have authority in each case." Kombi *vs.* Lakshumi.‡ Again, "his power as the head of the family is a qualified power, qualified by the fiduciary relation and the duties which attach to his position." Thenju *vs.* Chimma.§ Though the Ejaman or a Karnavan may not be under a liability to economise or to save, yet if his acts are proved to be detrimental to the interests of the family, they will not only be invalid against the family but the Karnavan may be removed from his management. But the principle which should guide one in determining whether a case is made out for the deposition of the Ejaman is thus stated:—"He should certainly not

* Unreported S. A. 364 of 1891, 11—3—1892. † Unreported S. A. 1329 of 1886, 20—12—1887. ‡ I. L. R. 5 Mad. 201. §I. L. R. 7 Mad. 413

be removed except on most cogent grounds * * *. Benefit seldom accrues to the family or an institution from removing one man and putting in another. It is generally the substitution of the empty leeches for the full one. The belief that this removal will take place on slight grounds has led this very family to a long course of litigation which must have caused much of the expenditure complained of." Erivani Ravi Varman *vs.* Itappu Ravi Varman.* The acts done must be done *mala fide* and with recklessness to the interests of the family, and the Ejaman must be shewn to be utterly incompetent to manage the property. Vernakot Narayanan Namburi *vs.* Vernakot Narayanan Namburi.†

Removal of Karnavan or Ejaman.

64. "But if a Karnavan has entered upon a course of conduct which unless checked, must end in the ruin of the family and if he persistently disregards the interests of the family of which he is the head and more especially if he violates his own solemn promises of reformation, sufficient ground has been shewn for his removal and the substitution of some fitter manager in his place" (vide Page 42 of Wigram's Malabar Law and Custom). The leading case on the subject is P. P. Kunhamod Hajee *vs.* P. P. Kuttiath Hajee.‡ There a Karnavan had demised a tract of forest land for a term of 99 years and it was also in evidence that the Karnavan, besides neglecting to provide sufficiently for the maintenance of the members of the Tarwad, had hopelessly allowed the affairs of the Tarward, to fall in confusion by allowing arrears of revenue to remain unpaid and by suffering property of considerable value to be sold for insignificant sums in execution of decrees.

*I. L. R. 1 Mad. 153. †I. L. R. 3 Mad. 169.

It was held that under these circumstances, a sufficient case had been made out for his removal. Their Lordships (Turner C. J. and Muthusami Ayyar J.) observed:—"Although if this lease had stood alone, we might have considered its extreme improvidence did not justify us in depriving the Respondent of his position, yet when taken with the conduct he has for some years pursued, it affords the strongest evidence that he is unfit for his position and that the management of the tarwad estate can no longer be left in his hands with due regard to the interests of the family. The granting of the lease is not an isolated act, it is a wilful misuse of his powers, following on a course of conduct in which he persistently displayed disregard for the interests of the Tarwad and violated the contract which had been imposed on him to restrain his irregularities." Blindness, will also, in some cases be a sufficient cause for the removal of the Karnavan. Kannarvan *vs.* Kunjan.*

65. A suit to remove a Karnavan is not a suit for the recovery of the Tarwad property and need not be valued as such but is a suit which asks for a relief that is incapable of valuation. Kunhi Raman *vs.* Puttalathu Kunhi Nambiar.†

Decrees by or against a Karnavan, how far binding against the family.

66. One necessary incident of the authority of a Karnavan or Ejaman is that he must be joined as a party in suits which affect the Tarwad property. He is *prima facie* the person entitled to protect the interests of the family, and unless his non-joinder is sufficiently explained, a suit by the junior members will not be held sustainable. Krishnaya Shanbhaga and another *vs.* Mara Devi and others‡

* I. L. R. 12 Mad. 307. † I. L. R. 4 Mad. 314. ‡ C. M. A. 449 of 1880, 16—3—1881.

The question how far a decree by or against the Karnavan is binding upon the junior members has been the subject of conflicting decisions which are not easy to reconcile. The latest ruling of the Full Bench decision of the High Court of Madras in Vasudevan *vs.* Shankaran* is to the effect that where a Karnavan honestly defends or prosecutes a suit on behalf of the family, it is not competent to the junior members to set it aside. Such a decree could be set aside only for fraud, and in the absence of fraud, the family members are bound by it. The following is the full text of the judgment of Shepherd J., where his Lordship reviews all the previous authorities on the point and discussing the question from various stand-points, comes to the conclusion that the junior members cannot be allowed to bring a second suit for the same subject-matter as in the previous suit.

"The question raised by the reference is one of considerable importance. Since 1880 it has constantly been discussed in this Court. Different views have been propounded, and it would not be easy to reconcile all the decisions. I propose first to examine these decisions and afterwards to consider the question from other aspects, and also with reference to the arguments which are urged against the admission of the principle that a Karnavan can properly represent his Tarwad in suits professedly brought by, or against, the Tarwad.

"In Varanakot Narayanan Namburi *vs.* Varanakot Narayanan Namburi,† the senior member of an illom had been sued as such for the recovery of land alleged by him to belong to the illom. A decree having been passed against him, a junior member of the illom, alleging fraud, sued for a declaration with regard to the same land as against the Plaintiff in the

* I. L. R. 20 Mad. 129. † I. L. R. 2 Mad. 328.

first suit. It was held that the junior was properly represented by his senior in the first suit, and that therefore having failed to prove fraud, he could not succeed in the second suit. In Kombi *vs.* Lakshmi* a decree for money had been obtained against the Karnavan and a suit was brought by the Anandravan to set aside the sale in execution of the decree. It does not seem to have been proved that the Karnavan was sued or sought to be made liable otherwise than in his personal capacity. The Court distinguished the case of a debt from the case of land such as was under consideration in Varanakot Narayanan Namburi *vs.* Varanakot Narayanan Namburi.† It held that the junior members were entitled to a decree on the creditor failing to prove that the debt was properly incurred for the purposes of the tarwad. It was in effect said that if the creditor intended to make the tarwad liable he ought to have made them parties or applied under Section 30 of the Code.

"In Vasudeva *vs.* Narayana‡ Mr. Justice Innes, who was a party to the last decision, expresses the same view again. That was a case in which a member of an illom, apparently the eldest, was defeated in a suit brought against him for redemption of certain land. In the second suit brought by his brother to recover the same land, it was held by Innes, J., that, although no fraud was alleged the brother was not bound by the former decree. Mr. Justice Kernan, who had taken part in the judgment in Varanakot Narayanan Namburi *vs.* Varanakot Narayanan Namburi,§ considered that it was unnecessary to decide the question whether the case of a Malabar

* I. L. R. 5. Mad. 201. † I. L. R. 2 Mad. 328. ‡ I. L. R. 6 Mad. 121.
§ I. L. R. 2 Mad. 328.

the Tarwad debt was binding on the Tarwad. There was no actual decision. In Ittiachan *vs.* Velappan* the question came before a Full Bench with reference to decrees for debt. The question stated in the judgment was as follows:—'Under what circumstances a decree passed against a Karnavan of a Malabar Tarwad will be binding on the other members of the Tarwad who may not have been made parties to the suit, so that a sale in execution will convey the rights of the Tarwad in the property sold in execution to a purchaser?' As might have been expected no definite answer was given to this question. The general effect of the observations made in the first part of the judgment seems to be that, in the opinion of the Court, the admitted practice of treating the Karnavan as a sufficient representative of the Tarwad was not strictly regular, but that notwithstanding it must be tolerated within certain bounds. In dealing with the particular cases under reference, the Court treated the circumstance that the Karnavan had or had not been sued in his representative character as the cardinal point on which to decide whether or not the Tarwad was bound by the decree. The next case Sri Devi *vs.* Kelu Eradi† is of importance because, in deciding it, the Court considered the Full Bench decision and acted upon their view of it. At the same time it must be said that, having regard to the facts found by the District Judge, the observations made on the general question of the force of decrees against a Karnavan were not strictly necessary. The District Judge on appeal held that the Karnavan had, in the first suit in which he was impleaded as Defendant, fraudulently admitted the Plaintiff's title. But the Court decided the case on the ground that apart

* I. L. R. 8 Mad. 484. † I. L. R. 10 Mad. 79.

from fraud the Anandravans were entitled, notwithstanding the decree, to have the question of title examined and to show that the decree was erroneous in point of fact. They considered that they were precluded by the Full Bench decision from holding that the Anandravans were bound by the decree against their Karnavan unless they proved *mala fides* on his part.

"The next case Subramanyan *vs.* Gopala* was heard by a Court composed of the same Judges as those who took part in the last cited case. This case differs from the former cases in the circumstance that the manager of the family had figured as Plaintiff in the former suit. It was found that she had sued not on her own account, but on behalf of the Tarwad and that she had contested the suit honestly and with due diligence. On this finding returned in answer to question sent down by the Court on the first hearing of the second appeal, the Court dismissed the suit brought by the junior members of the Tarwad, founding their judgment on the fact that the manager had been the Plaintiff in the first suit and thus distinguishing the case from Sri Devi *vs.* Kelu Eradi.†

"Some other cases were cited, but they have no immediate bearing on the point now under discussion. One negative proposition is clearly established by the cases to which I have referred—a decree made against a Karnavan is clearly not binding on the Tarwad, unless he sued or was sued in his representative character. It is also difficult to avoid the admission that the cases justify this further proposition that, in some cases, a decree against the Karnavan may be binding on the Tarwad and unimpeachable save on the

* I. L. R. 10 Mad. 223. †I. L. R. 10 Mad. 79.

ground of fraud. This limited proposition is admitted in Subramanayan *vs.* Gopala.* The distinction there insisted upon I fail to understand or appreciate. If the Tarwad may be adequately represented by their Karnavan in litigation promoted by him, I cannot see why this may not equally be represented by him in proceedings which are directed against the Tarwad. The distinction between the case of the Karnavan sued for debt and the Karnavan sued for property is also, I think, one which cannot be maintained. It is suggested in the case in Kombi *vs.* Lakshmi,† but since then does not seem to have been insisted upon. I concede that distinctions founded on the nature of the right or the way in which it comes to be litigated may be material in considering whether the Karnavan really did represent the Tarwad and honestly represent it; but otherwise I fail to see how they can be material. There are, it appears to me, only two alternatives. We must either hold that the status of the Karnavan has nothing in it to make a decree against him binding on the Tarwad, or that, in all cases in which he is sued or sues in his representative character, the Tarwad is bound, cases of fraud or collusion only being excepted. Having regard to the authorities already cited, I do not think we are precluded from affirming this latter proposition. The former proposition it would not be easy to reconcile with the Full Bench decision, which alone is binding on us.

"I will now consider the question apart from the recent cases and with reference to the position of Karnavan as understood in Malabar. I believe there can be no doubt that, prior to 1880, the theory that the Tarwad was fully represented by

* I. L. R. 10 Mad. 223. † I. L. R. 5 Mad. 201.

the Karnavan was universally admitted (see Varanakot Narayanan Namburi *vs.* Varanakot Narayanan Namburi,* Kombi *vs.* Lakshmi,† Wigram's Malabar Law). It is noteworthy that, as long as Mr. Justice Holloway, who was intimately acquainted with Malabar Law, was in this Court, the theory does not seem to have been questioned. In the Travancore State, I find from a recent judgment of the Court there that it is maintained to the present day (Narayana *vs.* Narayana).‡ It is unnecessary to repeat at length what has been said in several cases as to the rights and duties of the Karnavan. He is the manager of the Tarwad property; he is entitled to possession of it even against the Anandravans; he is authorized, subject to certain limitations, to alienate the family property and to pledge the credit of the family. He cannot be removed from office at the instance of the junior members and dispossessed of the family property except on proof of gross maladministration. Apart from this, the junior members have no other claim against him except for maintenance. No claim for division of the property is admissible (Eravanni Revivarman *vs.* Ittapu Revivarman,§ Varanakot Narayanan Namburi *vs.* Varanakot Narayanan Namburi,* Tod *vs.* Kunhamod Hajee,¶ Kannan *vs.* Tenju**). If the Karnavan being so placed with regard to the Tarwad, was, for many years prior to 1880, universally regarded as the person through whom the Tarwad should speak in Courts of law and was so treated by the Courts the remaining question is whether the Code of Civil Procedure forbids us to continue to treat him in the same way. This is a question which ought to be argued without reference to

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° I. L. R. 2 Mad. 328. † I. L. R. 5 Mad. 201. ‡ 11 Travancore, L. R. 112. § I. L. R. 1 Mad. 153. ¶ I. L. R. 3 Mad. 176. °° I. L. R. 5 Mad. 1.

considerations of convenience or expediency, which, however, in my opinion, favour the maintenance of the old practice rather than its abolition. The argument used in several of the cases seems to have been that, because the Civil Procedure Code does not provide for the case of Karnavans as it does, for instance, for the case of executors, and does contemplate the joinder of all parties interested in the subject-matter of the suit, the Anandravans of a Tarwad cannot be affected by a decree to which they are not parties either actually or constructively under the provisions of Section 30. The general proposition that all persons intended to be prejudicially affected by a decree ought to be joined as parties to the suit cannot be denied; but there are exceptions from this rule, and the question whether one person represents another is rather a question of substantive law than of procedure. One of the classes of exception consists of the cases of which Bissessur Lall Sahoo *vs.* Maharajah Luchmessur Singh* is an instance. Another consists of the cases in which the principle is admitted that the female heiress under Hindu Law represents the estate in such a manner that a decree against her in a suit properly framed may bind the reversioner. These exceptions have been allowed and maintained, notwithstanding the provisions of the Civil Procedure Code. The Section of the Code to which we are specially referred are the 30th and the 13th, explanation V. The 30th Section is of a permissive character. So far as concerns the principle involved there was nothing new in the provision. It had been acted on before the Code of 1877 came into force (Srikhanti Narayanappa *vs.* Indupuram Ramalingam†). If it were shown to have been invoked, in the case

* L. R., 6 I. A., 233. † 3 M. H. C. R., 226.

of the Karnavan and his Tarwad, it might be said that a decree against a Karnavan could, since the enactment of the Code, be no longer held binding on the Tarwad, unless the procedure prescribed by the section were followed. But this is not so, and I do not think it can properly be said that a Karnavan and his Anandravans have 'the same interest' in a suit brought by, or against, the Tarwad. The interest of the former, with his right of management and possession and his obligation to maintain the junior members, is surely not identical with the interest of a junior member, who has a claim for maintenance only. The whole contention in favour of the view that the Karnavan represents the Tarwad rests on the fact that he is in a position of authority having obligations and duties to perform, for discharge of which superior rights in the Tarwad property are conferred upon him. With regard to Section 13, explanation V, if it has any application to the case of a Malabar Tarwad, it rather supports the view that the Tarwad may be bound by a decree against the Karnavan *bona fide* litigating on its behalf. I am disposed to agree with Kernan, J., in thinking that the explanation refers alike to claims made by a Defendant and claims by a Plaintiff. The conclusion at which I arrive is that the Code of Civil Procedure does not prevent our giving effect to the theory of the Karnavan's representative character. I cannot help thinking that learned Judges have been induced to discountenance the theory on the ground that the interests of the Tarwads require that all their members should be joined in suits concerning their property or obligations. It was observed in some of the cases that to allow the Karnavan to represent the Tarwad in suits would practically amount to allowing him to alienate Tarwad property indiscriminately.

No doubt, the remedy by suit impeaching the decree against their Karnavan on the ground of his fraud or collusion, would not afford the Anandravans a complete indemnity against the possible misconduct of the Karnavan. But the inconvenience resulting is, I think, more than counterbalanced by the evil consequences, which have resulted from the departure from the old practice. The result has been that, although a man may have obtained a decree for a debt or for property against the Karnavan and some of his Anandravans, he has been exposed to successive suits by the remaining members of the Tarwad. It is always open to some unconsidered infant to re-open the litigation and insist on having the whole question re-tried. The rule of impartibility, which prevails according to Malabar Law, renders the consequences of an omission to join all the members of the Tarwad, if they are to be deemed necessary parties, much more serious than it is in a similar case under the ordinary Hindu Law. Whereas, according to the latter, the creditor or the purchaser might, at least retain under his decree against the manager, the share of that manager in the family property, in Malabar he is deprived even of that consolation when the Court holds that a junior member of the Tarwad may re-open a litigation which has been fairly conducted by his Karnavan and is persuaded to upset the former decree. In such a system it is not astonishing that a rule making the Karnavan the exclusive representative of the Tarwad should find a place."

This decision directly overrules the previous Full Bench Decision in Ittiachan *vs.* Vellappan* and is conclusive upon the point for the present.

* I. L. R. 8 Mad. 484.

67. Neither lunacy, idiocy, leprosy or any other disease is a good ground for exclusion from inheritance to the family property under the Aliya Santana system, even though it be congenital. For, "even under the Hindu Law, there is a difference of opinion as to whether in order to exclude from inheritance, lunacy must not be congenital. In any case the test in such cases under the Hindu Law is, whether the defect is such as would be sufficient to prevent the claimant from offering the funeral oblations. Right of succession under the Aliya Santana Law is in no way dependent on the capacity to offer funeral oblations." Sanku *vs.* Puttamma.* Chendu *vs.* Subbu.†

Exclusion from inheritance.

CHAPTER VI.

SELF-ACQUISITION.

68. According to the theory of the Aliya Santana Law, family property is not only joint but is also indivisible. "The preservation of the unity of the property being the only effectual mode of securing the beneficent enjoyment of the family property to the several members," their interest in the property is limited to their right to receive support and maintenance from such property, and to see that such property is not destroyed (*ante* paras 50 and 54). "The family members have rights out of the property than rights to the property." The family presents a type of a joint family system, pure and simple, in its most archaic form. The undivided family system under Hindu Law,

Joint ownership.

* I. L. R. 14 Mad. 289. † I. L. R. 13 Mad. 209.

closely resembles this family system, but with this difference, that the shares of the co-parceners are better defined and are capable of being ascertained on a division of the family property. The share of an individual member can be sold, mortgaged or attached in execution of decrees against the individual for simple debts, and though it cannot be devised in its undivided condition, the individual member may insist upon a partition and may have it separated and then devise it to whomsoever he likes. The same cannot be said of the shares of the members under the Aliya Santana system, for they have none, and "the individual right is so very feeble that it is not competent to any one of them to insist upon a partition." "The family and not the individual is the social unit." Joint ownership is the rule and the individual right consists of bare maintenance from the family, so long as the individual members reside in the family house (*ante* para 50). Hence the normal state of every Aliya Santana family is joint and the observations of their Lordships of the Privy Council in Dharum Das Pandey *vs.* Mussamat Shama Sunderi Dibiah, 3 Moore's Indian Appeals 240, made in a case under Hindu Law, may be considered to equally govern the joint family system under the Aliya Santana Law. "If a family lived in commensality, eating together and possessing some joint property, the presumption of law is that all the property they were in possession of was joint property, unless it is shewn by evidence, that one member of the family was possessed of some separate property; and this presumption is not rebutted merely by shewing that it was purchased by one member of the family and that there are receipts in his name respecting it; for all that is perfectly consistent with the notion of its having been joint property,

and even if it had been joint property, it still would have been treated in exactly the same manner." Under these circumstances, there could hardly be any doubt, ordinarily, as regards the nature of the property of a member of an Aliya Santana family. *Prima facie* therefore, ancestral property inherited by the family members from their ancestor, will be joint and all the family members will have equal rights of possession and enjoyment in the said property, subject to the usual incidents of the Aliya Santana Law. Property which has been acquired with the assistance of the joint property, will also be joint and the presumption invariably attaches itself in the case where the property has been acquired by the manager or Ejaman. Sanku *vs.* Puttamma.* Similarly, property which was self-acquired in the hands of the acquirer, will become joint in the hands of the heirs of the acquirer, and no member will be allowed to alienate or deal with it so as to prejudice the family interests, except with the consent of all the members. The same has now been decided with regard to the property which has been obtained on gift from the owner, by a Full Bench decision of the High Court in Kunhacha Umma *vs.* Kutti Mammu Haju.† In the earlier case in Narayanan *vs.* Kannan,‡ where the owner of a certain land made a gift thereof to his two sons and a daughter, with the intention that it should be enjoyed by them, subject to the incidents of the Tarwad property, it was held, upon the analogy of Hindu Law, that the donees took severally under the gift and that the interest of one of the donees was liable to be attached and sold in execution of a decree against him.§ So also, in Jacku and others *vs.* Sankaya,¶ it was held,

* I. L. R. 14 Mad. 38. † I. L. R. 16 Mad. 201. ‡ I. L. R. 7 Mad. 315.
§ S. A. 1733 of 1888, 18—12—1890. ¶ Reported in 1 Madras Law Journal 395.

that though the intention of the donor might have been that his wife and all her children should take the gift property as an Aliya Santana property, yet the persons taking immediate interest under the documents were the wife and her eldest son only, and therefore in their hands, the property was not family property but in the nature of self-acquired property. As such, it might have been taken in execution at the instance of a judgment-creditor of either of them. On the death of the mother, the whole property would not pass by survivorship to her eldest son, as that would defeat the intention of the donor to benefit his wife's family, but her moiety would go to her natural heirs who were her children. All the previous authorities including the one reported in I. L. R. 7 Mad. 315 were reviewed and fully considered by the Full Bench in the above case, and it was held, that in the absence of any intention by the donor as to how it should be held by the donees, the presumption was "that he (donor) intended that they (donees) should take them as properties acquired by their branch or as the exclusive properties of their own branch, with the usual incidents of the Tarwad property in accordance with Marumakkatayam usage which governed the donees." The decision in Narayanan *vs.* Kannan was thus overruled and "was found to be at variance with the rule of construction laid down by the Privy Council in Sreemutty Soorjeemoney Dossee *vs.* Denobundoo Mullick* and Mahomed Shamsvol *vs.* Shewakram." It appears from this decision that in order to constitute a tenancy-in-common and to entitle the donees to enjoy the property severally, the donor must express that intention in clear and unmistakeable terms. The character of the joint

* 6, Moores Indian Appeals, 526.

property so obtained on gift will be like other ancestral property under the Aliya Santanta Law, not only impartible but also unavailable as assets in satisfaction of debts due from an individual member of the Tarwad. See also Manjaya Ballala *vs.* Mada Hegadthi.*

Origin of self-acquired property.

69. In the early condition of the society under the Aliya Santana or Marumakkatayam system, probably the idea of separate property by an individual member was out of question. Even now, the joint-family system which obtains among the people, precludes any notion of any separate property being owned by any individual. The majority of the people subject to the system are essentially an agricultural population and the needs of agriculture keep them together and make them depend entirely upon the produce of the lands which they cultivate. But as civilisation advances and new fields of industries and arts are opened, and the struggle for existence is rendered keener, the necessity for quitting the family lands in pursuit of fresh acquisitions is largely felt, and it is not unusual for individuals of Aliya Santana families to seek new vocations and begin to make earnings of their own. In the lower classes, especially, where there is nothing to depend upon for sustenance, people frequently go to the Ghauts to work in the coffee estates of Mysore. (*Vide* South Canara Manual Vol. 1 Page 230). Under these circumstances, the nature of the property which is so held by an individual member would require to be determined. Though, no doubt, the presumption of law is that every family is joint until the contrary is proved and property acquired with the aid of joint

* Unreported S. A. 355 of 1885, 28—9—1885.

property follows the character of the property with whose aid it was acquired, yet where there has been admittedly no nucleus of property or where the nucleus of property is admittedly so small as to be insufficient for the acquisition of new property, the property will be treated as self-acquired and to be at the disposal of the acquirer. This was so decided in Santu and another *vs.* Ummer Hazar Byari.* There the property had stood in the name of two persons, members of an Aliya Santana family. A question arose as to the nature of such property. It was found that the family was not one possessed of any family property or any joint funds which might have served as a nucleus for the acquisition of the property in suit and it was therefore held that the property was the private property of the owners.

Burden of proof.

70. As regards the burden of proof in such cases, the following remarks of Mr. Mayne in paragraph 267 of his 'Hindu Law' may be instructive. "It seems to me that the difficulty arises from attempting to lay down an abstract proposition of law which will govern every case however different in its facts. It is correct to say that a Hindu family is presumed to be joint. It is merely equivalent to saying, that where nothing else is known of a family, the probability is that its members have never entered into a partition with each other. It is a definite statement as to the probability of a single fact. But to say generally of any piece of property in the possession of any member of the family, that it is presumably joint, is to assert one or other of a great many different propositions. Either that in its present condition, it was ancestral property, or that

* Unreported S. A. 492 of 1886, 22—12—1886.

it was acquired by means or with the assistance of ancestral property or by means of joint labour or of joint funds or both, or that it was acquired by a single member without aid from other funds or from other members and then thrown into the common stock. Now these propositions are each different in their probability and different in the facts which established them. The very statement of the Plaintiff's case or his evidence, may negative some of them, just as Defendant's case may admit of some of them. It seems impossible to say what the presumption is, until it is known what proposition the plaintiff and the Defendant respectively put forward." The mere circumstance that the property was acquired in the name of a junior member, for instance, would not be sufficient to raise a presumption in favour of self-acquisition, and it must be taken along with other circumstances such as separation of residence &c. The question is one of fact which has to be determined by evidence. Chinnu and others *vs.* Subraya Herley.*

71. When it is once established that a particular property is the private property of an individual member, it does not stand upon the same footing as the joint property of the whole family. It can be disposed of by the acquirer by mortgage, sale or gift to whomsoever he pleases, and it will also be liable for any debts which the acquirer might have contracted. Rayarappu Nambiar *vs.* Kelu Kurup.† But the right to dispose of it by will, has been denied, for in that case, the right of survivorship is said to take precedence over the right by devise. It is doubtful however whether the same would be held in the case of self-acquired property under Aliya Santana

* Unreported S. A. 318 of 1881, 15—9—1881. † I. L. R. 4 Mad. 151.

Law. For it has been ruled that unlike the Marumakkatayam usage of Malabar, the self-acquired property of a deceased member does not lapse to the Tarwad but goes to the heirs of the acquirer in his own branch. Antamma *vs.* Kaveri.* If the heirs of the acquirer in his own branch take it in opposition to and exclusion of the claims of the family, they will take it by right of inheritance and not by right of survivorship. So far as the separate property is concerned, the acquirer is to be regarded as divided and separate from the family members, like a member in an undivided Hindu family owning self-acquired property. If the latter could devise his separate property by will, there seems no reason to make an exception in the case of an Aliya Santana man who acquires property. But the matter is not of much consequence, as it appears, a separate Act will shortly be passed to enable Aliya Santana and Marumakkatayam Hindus of Malabar to devise their self-acquired properties by wills. Under the recent Malabar Marriage Act of 1896, half of the self-acquired property of the husband will pass to the wife and children of persons who have registered their marriages under the Act, in case they die intestate with respect to such self-acquired property, and the other half to the 'tarwad,' the word tarwad meaning one's own branch in the case of Aliya Santana families, having regard to the ruling in Antamma *vs.* Kaveri.†

Property of last surviving member.

72. Where the whole family has become extinct, leaving an only surviving member as the last person possessing the joint property, his rights over such property are the same as those over the

* I. L. R. 7 Mad. 575. † I. L. R. 7 Mad. 575.

self-acquired property and the property will become absolutely his. Alamu *vs.* Komu.*

Division.

73. Similarly, division of family property changes the parts of a joint estate into separate properties and the sharer becomes, to that extent, entitled to alienate it *inter vivos* as his separate property. Kinhakke *vs.* Derrakke and another.†

CHAPTER VII.

ALIENATIONS.

Danger of dealing with Aliya Santana persons.

74. From the account given in Chapter V of the constitution of a joint family under the Aliya Santana system, it may be gathered that the power of contracting debts or making alienations of the family property is extremely limited. Where the interests of a large number of persons are concerned, who entirely depend for their sustenance upon the joint family property, and who cannot enjoy such property except under the Ejaman, it is but natural that the character of the debts and alienations should be viewed with great caution. It may be said in general, that in an Aliya Santana family, no member, not even the Ejaman, has a right to create any debt, be it however small, so as to endanger the family property. Persons dealing with the Ejaman or any other member of an Aliya Santana family have in consequence, to exercise greater diligence and more care than would ordinarily be required of them while dealing with members of an undivided Hindu

* I. L. R. 12 Mad. 126. † Unreported A. S. 67 of 1881, 23—1—1883

family. For in the latter case, though the principle of survivorship obtains, yet the individual share of the member to whom the money is lent can be ascertained on partition, and is capable of being enjoyed separately, so that it is the individual member alone who is affected by the transaction. But even here, the stringency of the rule can be observed. The creditor who obtains a decree against a coparcener in a Mitakshara family has to attach the share of the judgment-debtor during his life-time, before he can recover the amount of the debt from his debtor (Deen Dayal *vs.* Jagdeep, 4. I. A. 247,); and if the debtor dies before his undivided interest in the family is attached in satisfaction of the debt due, the right of survivorship takes precedence of the decree amount, and the creditor is left without a remedy. Sivagiri *vs.* Alwar Ayangar,* Karnataka Hanumantha *vs.* Hanumaya.† This principle would apply with greater force under the Aliya Santana system in which the property is indissoluble and survivorship is the rule.

Conditions under which debts can be contracted.

75. The power of contracting debts is limited by two conditions, (1) competency of the person contracting the debt (2) the purpose for which the debt is borrowed. In the first place, the person who takes the loan must be competent to borrow, *i. e.*, he must not be a junior member in the family, for as has been already pointed out (*ante* para 53), no member except the Ejaman can deal with third parties so as to effect the family property. The individual member has no share in the family and his right is merged to that of the family. A purely personal debt therefore of an individual member would not bind the family. He has no separate interest which can

* I. L. R. 3 Mad. 42. † I. L. R. 5 Mad. 232.

be sold in execution. A sale therefore of the family property in execution of a decree against an individual member could not be binding upon the family. Korapalu *vs.* Sankappa Shetti.* Even a sale of the family property by an individual member under a *bona fide* mistake of law as to his right to dispose of the same, would not render the sale valid. Thus in a case where a mother and son purported to sell their undivided moiety in 1857, (when compulsory partitions were permitted under the Aliya Santana Law) to the Plaintiff's predecessor-in-title and the Plaintiff brought a suit to redeem a mortgage of 1851 effected by the Ejaman of the family in favor of an ancestor of some of the Defendants, it was held that as the right to the half share purported to be sold in 1857, had no legal existence, nothing could pass by the sale and the suit should be dismissed. Byari *vs.* Puttanna.† But if the individual member has left any self-acquired property, the creditor may attach and sell the assets of the individual member into the hands of any one who may be in possession thereof. For "as the acquirer could dispose of his property in his life-time, it does not stand upon the same footing as property in which other members of the family have co-ownership and in which each coparcener can only dispose of his existing interest. Under the Mitakshara Law, it is so far the acquirer's individual property and though he dies undivided from his coparceners, his childless widow takes it. According to the decision of the Privy Council in the Shivaganga case, 9. M. I. A. 543, it does not devolve by survivorship like coparcenery property and the coparcener has no communion of interest in it with his other coparceners. He is as it were, divided from them in

* Unreported S. A. 444 of 1885, 23—10—1885. † I. L. R. 14 Mad. 38.

respect of it. If they take it by reason of his leaving no descendants and no widow, they take as heirs, not coparceners. If this be so, such property would seem to enure as assets of the deceased person for payment of his debts." Rayrappan Nambiar *vs.* Kelu Kurup.* In Aliya Santana families unlike the Malabar Tarwad, the self-acquired property of a deceased member does not lapse to the Tarwad but goes to the heirs of the acquirer in his own branch, (Antamma *vs.* Kaveri†) and the heirs of the acquirer would be liable to pay his debts, since it would be inequitable for them to enjoy a benefit from the deceased member without discharging his debts. But the extent of the liability will be limited to the assets he might have received from the family.

Debt must be for the benefit of the family.

76. Secondly, the debt must have been contracted for the benefit of the family. This must be clearly proved, like any other relevant fact, in order to entitle the creditor to get a decree against the family. There is no presumption that a debt contracted by a Karnavan or an Ejaman is for the benefit of the family. It was at one time supposed that there was such a presumption. Thus in Venkatesh Kamti *vs.* Antappa and others,‡ where a suit was brought by a member of an Aliya Santana family, to recover a share free from the attachment effected at the instance of a creditor of the 1st and 2nd Defendants, it was held by the Sadr Court that as the 1st and 2nd Defendants were the managing members, the debt must in the absence of evidence to the contrary, be presumed to have been contracted for the benefit

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* I. L. R. 4 Mad. 151. † I. L. R. 7 Mad. 575. ‡ Special Appeal No. 128 of 1860, 30—1—1861.

of the family, and that therefore the claim of the Plaintiff was not sustainable.

So also in Decree No. 38 of 1852, the Sadr Court observed: "Debts contracted by a Karnavan bind Tarwad property unless it can be clearly and satisfactorily proved that they were not for the benefit of the family." But the modern view is that contained in Kutti Mannadi Ayyar *vs.* Payanu Muthan,* where their Lordships say: "Whatever may be the powers of a Karnavan in the management of a Tarwad, it is clear that the Karnavan cannot, without consent of the members of his Tarwad, bind them to pay his debt. In many cases, the surrounding circumstances, in the absence of direct evidence, may tend to shew the purposes for which the debt is contracted. But in the absence of all evidence, we are not aware of any presumption of law that a debt contracted by a Karnavan was on behalf of the Tarwad." Accordingly in Shivarama Madyastha *vs.* Surappa Shetti† and others, it was found that no necessity existed for the Defendant to borrow money and that no money was in fact advanced upon the documents. The High Court held that even assuming that the money was actually advanced upon the documents, the debt arising out of the obligation would not be binding upon the family, as there was no necessity for the advance of money. See also Lingu Hegade *vs.* Padma and others;‡ Ramaya Shetti *vs.* Narasamma Hegadthi.§

77. There has been as yet, no decided case on the point whether an Ejaman has power to acknowledge a debt

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* I. L. R. 3 Mad. 288. † Unreported S. A. 293 of 1891, 5—1—1892. ‡ Unreported S. A. 1728 of 1891, 22—9—1892. § Unreported S. A. 943 of 1884, 16—3—1885.

due by the family so as to save Limitation, but it would seem that he has such power, since the same power is vested in the manager of a Hindu family (Chinnaya *vs.* Gurunathan),* whose powers are not of so extensive a character as those of a Karnavan or Ejaman. But it is doubtful whether an Ejaman could revive a barred debt.

Acknowledgment of debt due.

78. But the power to contract debts stands upon a different footing from making dispositions of the family property by the Karnavan or Ejaman. The distinction between the two is thus pointed out in Kombi *vs.* Lakshumi.† "The former power (alienation) is not unlimited. The assent of the other members of the family must be shown to the particular transaction. The assent of the senior Anandravan is regarded as sufficient evidence of the assent of the family. The Karnavan is therefore not the agent of the family, but must have special authority in each case. As manager of the family property, he has authority to pledge the credit of the family for necessary purposes, but it would be too much to hold that the family property is liable to be dissipated by enforcement of decrees against the Karnavan for any simple debt of whatever character, contracted by him. The result would be that though tied down by the rule which requires him to have the assent of the members of the Tarwad to an alienation of immoveable property, the Karnavan may enter upon a career of extravagance and ruin the Tarwad by suffering voluntary alienations of the Tarwad property in execution of decrees against him." It is clear that the necessity of contract-

Power to make alienations differs from power to contract debts.

* I. L. R. 5 Mad. 169. † I. L. R. 5 Mad. 201.

ing a loan is not one that would always justify an alienation of the family property. In the latter case, only very strong circumstances will have to be shown before such a transaction is recognised. In Bhojaraja Ballala *vs.* Rukku Shettati and others,* it was found that the usufructuary mortgage-deed in Plaintiff's favour was executed by Defendants 1 to 4 in fraud of Defendants 5 to 8, the other members of the family, though the debt secured thereby was mainly incurred for discharging a prior hypothecation for Rs. 2,800, which was admitted by Defendants 5 to 8. The Court held that though a debt was due by the family, there was no necessity to execute the usufructuary mortgage to Plaintiff, which was therefore set aside.

Not only the members who have an immediate interest in the family property but also those whose interests have been postponed to those of others, will be entitled to impugn the alienations, if they are found not justified by family necessity. Thus in Aithalwa *vs.* Guddu,† the Appellant one Aithalwa was given a life-interest in a certain property and after his death, the property was to be enjoyed absolutely by the Respondent and her heirs, under a deed of settlement made by one Devalwa whose power to make the settlement was not denied. Aithalwa executed a mortgage in favor of the Defendants. The Respondent sued to set aside the mortgage, which was in fact a colourable transaction. It was contended for the mortgagees that the Respondent had no right to object to the mortgage in question, since her interest in the property could arise only after her husband's death. It

* Unreported S. A. 1064 of 1894, 19—3—1885. † Unreported S. A. 304 of 1885, 18—8—1885.

was held by the High Court (Muttusami Ayyar and Hutchin JJ.) that the objection was not tenable, since the mortgag was calculated to prejudice her position and was one to whic no legal effect can be given.

Permanent leases void.

79. Similarly, a Karnavan is not competent to gran permanent leases of portions of famil property, even for consideration of a annual rent. In Venku *vs.* Mahna Panj Markala,* a suit was brought by the senior female to set asid a permanent lease by the 1st Defendant, the senior male, i favour of 3rd and 4th Defendants, and to recover possession o the plaint property. Their Lordships (Kindersley and Tarra JJ.) while holding that the lease must be set aside, observed "A permanent lease amounts to very nearly a permanen alienation of the property from the family in consideration o an annual rent. Although there is no evidence as to th enhanced value of the land in this particular locality, there i no doubt that generally the value of land is continually increas ing from various causes. A rent therefore which was con siderable at the commencement of the lease, would for some years, almost certainly become inadequate, and the family would be excluded for ever from participating in the increased value of the land. The anxiety of the Defendants to retain the land indicates the loss which the Plaintiff's family would sustain by the permanent lease. * * * While the 1st Defendant had the right of management, it does not appear that in the absence of special circumstances, he had the right of granting a permanent lease without the consent of the senior Anandravan. Probably his powers would not exceed those

*Unreported S. A. 293 of 1881, 19—1—1882.

of the Karnavan of the Malabar Tarwad." Tod *vs.* P. P. Kunhamad Hajee,* was referred to, in the course of the judgment and approved. See also Tyampa *vs.* Towda† and Manjanna Bunga *vs.* Machu and others.‡ These decisions overrule the earlier ones in which it had been held that an Ejaman could let out family land on Mulgeni or permanent lease.§

Circumstances justifying alienation.

80. The important question will then be, what are the circumstances that will justify the Ejaman or Karnavan in contracting debts or in making alienations of family property, that would bind the whole family. The question can only be answered by the rule laid down by the Privy Council in the leading case of Hanuman Pershad *vs.* Babooyi 6. M. I. A., 393: "The power of the manager of an infant heir to charge an estate not his own, is under the Hindu law, a limited and a qualified power. It can be only exercised rightly in case of need or for the benefit of the estate. But where in a particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the danger to be averted or the benefit to be conferred on it, in the particular instance, is the thing to be regarded." The Karnavan or Ejaman, though ordinarily has greater powers than the Ejaman of a Hindu family in the management of the family estate, his powers with regard to alienations of family property do not differ from those of the manager of an infant heir. "His power as the head of the family is a qualified power, qualified by his fiduciary relation

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* I. L. R. 3 Mad. 174. † Unreported S. A. 85 of 1885, 18—8—1885. ‡ Unreported S. A. 103 of 1892, 18—4—1893. § A. S. No. 269 of 1850, A. S. No. 144 of 1859, A. S. No. 265 of 1861.

and the duties which attach to his position." Thenju *vs.* Chimma.*

Nevertheless, he is competent to enter into transactions so as to bind the family where there is real necessity for them. Thus, where the original debt appeared to have been contracted for the payment of revenue under a bond of 1851 and subsequently the immediate predecessors of the Plaintiff, gave a fresh bond for the arrears of interest then due, and in 1883, a consolidated bond for the two earlier bonds was given on the hypothecation of the family lands, it was held by the High Court, that, it having been found that the monies secured were advanced in good faith to the manager for the time being for family necessities, the Plaintiff was not entitled to repudiate the bond of 1883. Ammu Shettati *vs.* Ramakrishna Bhatta.† It must be added that in this case, the Plaintiff was found to have been wrongfully excluded from management, and it was argued that there must be an exception in her favour, to the general rule that every member of a joint family is bound by alienations or encumbrances made by the manager for proper family purposes. The High Court overruled the contention, observing that the exception if made, would lead to most inconvenient consequences and that a person in Plaintiff's position was merely entitled to scrutinise narrowly the transactions entered into, during the period when she was deprived of her right and not to upset dispositions of property which are proper and reasonable in themselves. So also, where a mortgagee remained in possession of the mortgaged property under a mortgage document of 1853 by a previous manager and his successor executed a bond for the balance due,

* I. L. R. 7 Mad. 413. † Unreported S. A. 418 of 1887, 21—11—1888.

redeeming the previous mortgage, it was held that the latter bond was binding and what the manager did was to substitute one form of security for another which was subsisting at the time. Viranna Shetti *vs.* Ramu Shettati.* See also Nagamma Shettati *vs.* Duggappa Shetti and another.†

As Mr. Mayne observes in para 321 of his Hindu Law, "In every case, the question is one of fact, whether the transaction was one which a prudent owner acting for his own benefit would enter into. A sale of part of the property in order to raise money to pay off debts which bound the family or to discharge the claims of Government upon the land or to maintain the family or to perform the funeral or family ceremonies would be proper if it was prudent and necessary. And where there are binding debts, which cannot otherwise be met, a sale will be justifiable to pay them off, even though there was no actual pressure at the time in the shape of suits by the creditors. For the manager is not bound, and indeed ought not to put the estate to the expense of actions. *A fortiori,* of course such dealings will be justified where there are decrees in existence, whether *ex parte* or otherwise, which could at any moment be enforced against the property. And the same circumstances which would justify the sale of a part, might justify the sale of the whole property, though of course a very strong case would have to be made out." Where the amount covered by the document appeared to have been taken for the purpose of erecting a house on the family property, it was held that the debt was binding. Palat Raman *vs.* V. Palinchara.‡

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* S. A. 691 of 1880, 4—3—1881. † S. A. 734 of 1883, 17—12—1883.
‡ Unreported A. S. 9 of 1878, 6—3—1879.

Burden of Proof.

81. As regards the burden of proof of the family necessit justifying the alienation, "it depen upon the circumstances and not an presumption invariably arising out of Malabar institutions, o whom in any particular case, the burden of proof lies." Koml *vs.* Lakshumi*. Primarily, the burden of proof would be upo the creditor to shew the debt to be binding upon the famil because he admittedly deals with one whom he knows to hav a qualified power. Thus in Daramma *vs.* Mahalinga Shet and others,† the question was whether a mortgage-dee executed by only a few members of a family was binding upo that family. The 1st Defendant, a leper and the 2nd Defend ant, the *de facto* Ejaman had not joined in it but an instrumer of further charge was produced as having been executed b them, ratifying the original mortgage-bond. The 2nd Defend ant was found not to have signed the later document, and a to his contention that the original mortgage was not valid, was held by the High Court (Muttusami Ayyar and Parke JJ.), that the burden of proof was on the creditor as laid dow by the Privy Council in *Hanuman Pershad Pandey's* cas and that the Courts below, were right in holding that th creditor did not shew that the debt which he sought to recove by sale of the family property was one binding on the famil The rule is thus laid down in the Privy Council case referre to above: "Their Lordships think that the question on whor does the *onus* of proof lie in such suits as the present is on not capable of a general and inflexible answer. The presump tion proper to be made will vary with circumstances and mus be regulated by and dependent on them. Thus where th

* I. L. R. 5 Mad. 201. † S. A. 323 of 1885, 13—8—1885.

mortgagee himself, with whom the transaction took place, is setting up a charge in his favour made by one whose title to alienate he necessarily knew to be limited and qualified, he may be reasonably expected to allege and prove facts presumably better known to him of the alleged needs of the estate and the motives influencing his immediate loan. It is to be observed that the representations by the manager accompanying the loan as part of the *res gestæ* and as the contemporaneous declarations of an agent, though not actually selected by the principal, have been held to be evidence against the heir and as their Lordships are informed that such *prima facie* proof has been generally required in the Supreme Court of Calcutta, between the lender and the heir, where the lender is enforcing his security against the heir, they think it reasonable and right that it should be required. It is obvious however that it might be unreasonable to require such proof from one not an original party, after a lapse of time and enjoyment and apparent acquiescence; consequently, if as is the case here as to part of the charge, it be created by substitution of a new security for an older one, where the consideration for the older one was an old precedent debt of an ancestor not previously questioned, a presumption of the kind contended for by the Appellant would be reasonable." On the other hand, there is a very strong presumption in favour of the validity of a mortgage bond executed by the only adult members (Ejaman and senior Anandravan). The lender is not bound to see to the application of the money or to enquire into the previous management of the family. All that he is bound to do is to satisfy himself that he is lending money for the benefit of the family and that the debt was one which was properly charge-

able on the family property. Abbakku *vs.* Parameshri.* S
also where the Plaintiff's family consisted of 32 members ar
the deed in question in the case was executed by 18 of then
and since the suit was instituted, all the Plaintiffs except fou
withdrew from it and acknowledged the binding character
the debt, it was held that the attitude adopted by the famil
members raised a strong presumption in favour of the *bona fi*
character of the transaction. Per Collins C. J. and Parker J
in Aggu and others *vs.* Birmaya.† A recital in the mortgag
deed signed by the Ejaman is some evidence against the famil
Chinnu Shetti and 6 others *vs.* Kanne Hegadthi and 2 others
and where a Plaintiff herself attested the instrument in toke
of her assent to the document executed by her only brother th
Ejaman of the family, it was held that the hypothecation sue
on was binding upon Plaintiff. Nagamma Shettati *vs.* Duggapp
Shetti.§ The assent of the senior Anandravan would b
regarded as sufficient evidence of the assent of the famil
Kombi *vs.* Lakshumi.¶

Validity of alienations not made by all the members.

82. Where an alienation is absolutely necessary and is most reasonable and prudent arrange ment for the protection of the othe family property, and is also effected i pursuance of the decision of a family conclave, the factiou and capricious dissent of a single Anandravan would not b allowed to invalidate it. Kalyani *vs.* Narayana.** Forma consent or signature of other members of the family is no necessary to render a bond or other document executed by th

* Unreported S. A. 850 of 1890, 5—11 1891. † Unreported A. S. 13 of 1894. ‡ Unreported S. A. 912 of 1883, 16—2—1884. § Unreporte S. A. 734 of 1883, 17—12—1883. ¶ I. L. R. 5 Mad. 201. ** I. L. R. Mad. 266.

Karnavan valid and binding on them, if it is executed *bona fide* and with their knowledge or consent or for their benefit.*

Acquiescence.

83. Long silence and acquiescence on the part of the family members will have the effect of rendering the transactions valid and binding upon the family. Thus in Lingu Hegade *vs.* Koraga and others,† it was found that Plaintiffs were all along aware of the lease and it was held therefore that they could not be allowed to set it aside. See also Narsaya Bhat *vs.* Suraladi Billa Pandey.‡ A conditional sale-deed by a *de facto* manager for a debt due by the late manager, which was acquiesced in by the Plaintiff through a long course of years, during which she knew of the proceedings, was held binding T. Krishnaya *vs.* Duggu.§ Adverse possession for more than 12 years by the purchaser would bar the rights of the family members to set aside the alienation. Mada Hegade *vs.* Honnu Shettati.¶ So also where Plaintiff's branch was divided from Defendants' branch for more than 50 years, it was held that the Plaintiffs were not entitled to impeach the alienations made by the Defendants' branch. Akkamma and others *vs.* Sankra Shetti and others.**

Remedies of family members against improper alienations.

84. As regards the remedies possessed by the family members against improper alienations by the Ejaman or Karnavan, it is settled that they can seek to recover possession on behalf of the family, if the alienee is found to be in possession of the property, irrespective of the consideration which may have passed into the hands of the Ejaman, where such

* S. C. D. 38 of 1852. † Unreported S. A. 108 of 1882, 24—8—1882. ‡ A. S. 273 of 1853, 2—10—1856. § Unreported S. A. 544 of 1871, 19—1—1872. ¶ Zilla and Subordinate Court Decision No. 37 of 1852, 15—12—1854. ** Unreported S. A. 332 of 1887, 6—2—1888.

consideration was not for family purposes. But the par setting aside the alienation will be required to make good the purchaser the amount he has paid in so far as that amou has been applied for family necessities. Thus in Bhojara Ballala *vs.* Rukku Shettati,* though the usufructuary mortga was set aside, yet the amount which was found to have be applied for proper family purposes to the extent of Rs. 2,8 was made payable by the family members. If the alienee not in possession, a suit for declaration that the transaction invalid will suffice, and a suit to declare that the several docu ments by the Karnavan are not valid and binding, will not b bad for multifariousness. Vasudeva Shanbhaga *vs.* Kulead Narna Pai,† Mahomed *vs.* Krishnan,‡ Abdul *vs.* Ayaga,§ Kel *vs.* Kammara.¶

A Court-fee of Rs. 10 for each declaration will be required under cl. VI, Sch. 2, Art. 17, of the Court Fees Act. Govindan Nambiar *vs.* Krishnan Nambiar,** Narayana *vs.* Muttayan,†† Krishnan *vs.* Raman.‡‡

Res-judicata.

85. But where the question as regards the validity or invalidity of a transaction has been tried and determined between the representatives of the deceased judgment-debtor on the one hand and the creditor or the purchaser on the other, no separate suit will lie on the same question between the same parties. Thus the Plaintiff and another person, who were members of an Aliya Santana family were made parties to the execution of a decree, as the legal representatives of the deceased judgment-debtor. The Plaintiff opposed the execution on the ground

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* Unreported S. A. 1064 of 1894, 19—3—1895. † 7 M. H. C. R. 290. ‡ I. L. R. 11 Mad 106. § I. L. R. 12 Mad. 234. ¶ Appeal against order 53 of 1890, 4—12—1890. ** I. L. R. 4 Mad. 146. †† I. L. R. 7 Mad. 134. ‡‡ I. L. R. 11 Mad. 266.

that her title to the property was not derived from the deceased judgment-debtor and that as the judgment-debt was not of a binding character, the attachment of her family property must be raised. Her contention was disallowed by both the Lower Courts. In a subsequent suit to set aside the attachment, it was held that the suit would not lie. Ranga Kamthi *vs.* Ramaya Shetti.* This point was also similarly decided in Badoo *vs.* Huvamme and another.† There one Huvamme had obtained a decree against Kittu and Koti, male members of an Aliya Santana family. Kittu died. The decree-holder applied first for execution and named, as the legal representative of the deceased, Akku and Kannu, females, and Linga a male, who were all members of the Tarwad. The Mulgeni right in suit was attached. Objection was taken by the persons who had been made parties on the ground that the judgment-debt had not been contracted by Kittu for family purposes. The Munsif overruled the objection. On appeal, it was held that the Mulgeni was the self-acquisition of Kittu, and on this ground, the attachment was maintained. Badoo the daughter of Akkoo, and Lingu aforesaid, then filed the present suit to contest the finding. The Judge held that Badoo was represented in the execution-proceedings by her mother and that the suit cannot stand. It was held by the High Court confirming the Appellate Court's decree, that the Appellant was sufficiently represented by her mother in the execution-proceedings, and that the question cannot be re-opened. See Arundahi Ayyangar *vs.* Natesh Ayyar,‡ Koraga *vs.* Munda Sheregara,§ and the decision of the Judicial Committee of the Privy Council in Chowdry Wahed Ali *vs.* Mussamut Jumaee¶.

° Unreported S. A. 79 of 1883, 28—7—1874. † Unreported S. A. 213 of 1884, 13—7—1884. ‡ I. L. R. 5 Mad. 391. § Unreported S. A. 39 of 1881, 11—10—1881. ¶ 11 B. L. R. 149.

CHAPTER VIII.

PARTITION.

Division allowed.

86. It was stated in the opening chapter that in t matter of partition Aliya Santana La underwent a retrograde step and th practice was made to conform to theory. An examination the previous state of the law will make it obvious that such the case and that if divisions were allowed as before, th family system which now obtains would long since hav broken up. Divisions were formerly made freely but in 184 in A. S. 82 of 1843, Mr. Findlay Anderson passed his famou decree in which he condemned divisions on principle but as rule of expediency thought partition advisable where th members cannot amicably and peacefully live together. Suit for partition continued to be brought before the Zilla an Subordinate Courts even after this decision, by both the femal and male members, and a share was decreed in such suits Thus in Maire *vs.* Sankoo Marla and others,* Plaintiff a femal brought a suit for a partition of the family property, and was held that the 1st Defendant the Ejaman in possession, ha no exclusive right in the property, and as he was a coparcene with the Plaintiff, the parties had all equal rights, and tha therefore the Plaintiff was entitled to demand a partition fro the 1st Defendant during his life-time. In Lakshumi an another *vs.* Duggu and others,† which also was a suit for div sion, Plaintiffs were held entitled to a share. In Venktray Ballala *vs.* Mahalinga Shetti,‡ though the division was depr

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* Decree No. 196 of 1851, 10—6—1853. † A. S. 224 of 185 24—10—1854. ‡ A. S. 178 of 1852, 25—9—1854.

cated on the general principle that such a division was opposed to the letter of the Aliya Santana Law, yet a share was awarded on the principle stated in A. S. 82 of 1843. In A. S. 264 and 265 of 1852 decided on 25th June 1856, Plaintiff was awarded ⅓ share in the family property in a suit for partition. In A. S. 37 of 1855, Plaintiff a convert to Christianity, sued for his ½ share. It was urged in defence that the Plaintiff being a single member, had no such right. Plaintiff was awarded a life-interest in the property. (See also Duggoo *vs.* Kajambai,* Monappa Shetti *vs.* Bhamo,† Kantoo *vs.* Cojoombai).‡ But it will be noted that in all these partitions, males were awarded only a life-interest in the share allotted to them, conformably to the theory that their interest in the property was restricted to one of maintenance and that after their deaths, their share had to lapse to the family. But where females were given their share, the property in their hands was not fettered with restrictions as in the case of males, since they were regarded as the proprietors, they being the channel through which the property devolves on the descendants.

Division prohibited.

87. While this was the state of the law, a suit for partition came up in Special Appeal, before the High Court in Munda Chetti *vs.* Timmaju Hengsu,§ and it was held by Frere and Holloway JJ., after a review of all the previous decisions, that such partition was opposed to the letter of the law as contained in the Code of Bhutal Pandya, and that the family system which obtains in Canara resembles that of Malabar in the vesting of the property in the females and that it only differs

*A. S. 124 of 1852, 31—5—1855. † A. S. 132 of 1852, 1—2—1854.
‡ A. S. 269 of 1853, 31—5—1855. § 1 M. H. C. R. 380.

from the latter, in "more consistently carrying out the doctrine that all rights are derived from females." This decision has settled the law with regard to partitions and the rule of impartibility of family property is as firmly established as ever.

Effect of the above decision.

88. But it will be remembered that the effect of this decision is not that no partition is at all allowed under any circumstances, but only that no *compulsory* division can be brought about at the instance of a single member. There is no inherent right in an individual member to demand a partition of the joint property as in a coparcenary under the Hindu Law. Voluntary partitions, however, are freely allowed, and where the family is too large, such divisions of property among the several branches are very common. Kinhakke *vs.* Derakka;* Kotaye *vs.* Honnu.†

89. But such partitions should be made with the consent of all the parties concerned. If no such consent is given, then a partition, made behind the back of the non-consenting parties thereto and without their knowledge, will not be valid and binding upon them. Abbakku Shettati *vs.* Uggappu and others.‡ A partition made with the consent of all the existing adult members, even if there be some minors, is valid and if just and legal will bind the minors. This is especially so where the minors are represented by their lawful guardians. Manjaya Shetti *vs.* Daramma Shettati and others.§ The only ground upon which the minors can be allowed to impeach it, is fraud

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* Unreported A. S. 67 of 1881, 23—1—1883. † O. S. 26 of 1886, 21—2—1887. ‡ Unreported S. A. 231 of 1891, 26—11—1891. § Unreported S. A. 1329 of 1886, 20—12—1887.

or unfairness which affects their interests. Kotaye *vs.* Honnu. In Aitappa *vs.* Dumanna,* the adult members of a family submitted their dispute about a partition of family property to an arbitrator without the intervention of the Court. They represented to the arbitrator that certain property which was really ancestral was self-acquired and induced him to direct an absolute partition, where only an arrangement for separate enjoyment of shares for life, should have been and was intended to be made. The award having been objected to in a suit brought on behalf of the minor members of the family, it was held by the High Court (Collins C. J. and Wilkinson J.), that under these circumstances, the award was invalid and would not bind the minors. It is clear however that if no minors should exist at the time when such a partition is made, persons who might subsequently be born in the family would have no right to set aside the partition, as their interests in the family property accrue only on their birth in the family.

Absolute divisions to be distinguished from family arrangements.

90. These partitions, however, are to be carefully distinguished from those agreements or settlements in the family, whereby it is arranged for the sake of convenience that the branches should live upon and enjoy separate properties, and in such cases, it has been held that no division is to be presumed, and that the usual incidents of a joint property attach themselves to such separate enjoyment. Thus in Manjaya Shetti *vs.* Daramma,† an arrangement was entered into among the four branches of a family. Two of the branches which were expected to be soon extinct, were

* Unreported S. A. 1505 and 1506 of 1888. † Unreported S. A. 1329 of 1886, 20—12—1887.

to have the management in their hands, while the remainin two were to hold the family properties after the extinction the first-mentioned branches in separate shares, it was hel that this was a family arrangement, and having been acte upon for about 17 years, was binding upon the whole family The question, however, whether a guardian is at liberty t enter into an agreement to divide at a future time and whethe effect can be given to it against the minor under the Aliya Santana usage according to which partition takes place only with the consent of all the members of the family was left undecided. It would appear that such agreements cannot be validly made as it would unnecessarily fetter the discretion of the minor, whether he should remain joint or divided. In Chikkaya Shetti *vs.* Achappu and others,* there was a karar or agreement which, while providing for the separate enjoyment of different lands by different branches, stipulated that the members should "*live in union as their ancestors had done,*" that each of the branches should render an account of its management to the others every year, that a debt due on the mortgage of the family house should be paid by them in equal shares, and that none of them should alienate the lands, except in conjunction with the other branches, and that any member desiring to separate, should receive the value of his share and make it over to the other branches. It was held by the High Court, that this karar evidenced a state of things which was inconsistent with the *status* of division, and this, notwithstanding the fact that the members had been acting independently of each other for a long time. Their Lordships (Turner C. J. and Muttusami Ayyar J.), observed: "Now there is no doubt

* Unreported S. A. 1175 of 1883, 17—11—1884.

force in the arguments which have been addressed to this Court, that the document contains stipulations which, if it was intended that the family should remain in union, were either unnecessary such as the prohibition of alienation, inconsistent with the general rule of coparcenary, such as the provisions that the several managers should account to one another, and that there should be contribution for payment of mortgage debts. But when we look at the principal object of the karar and the terms in which its leading purpose is expressed, we are unable to accede to the arguments adduced to us by the Appellant's Pleader, and we are constrained to the conclusion that it was the intention of the family to remain a united family and to restore the relation which the several members had borne to one another, before the decree for partition was passed. The members declare in the karar that they have resolved to 'remain in union as their fathers had done.' These terms are express and they govern the whole document. Although, as is sometimes arranged in families remaining in union, it was intended that the senior members of the several branches should manage specific portions of property and should provide for the maintenance of their respective branches, out of the income collected by them respectively, it was evidently the intention that the properties should remain common to the whole family. The management committed to these representatives was made subject to accountability, probably because the position they were intended to fill, was altogether different from the Ejamanship which would be only accorded to the senior representatives of the several branches so long as they remained in union. The liability to account shews an intention at once that the property should not be

divided and that the accounting representatives should not possess the full powers of an Ejaman." It may be mentioned that in the above case, the karar was made in the course of the execution of a decree for partition obtained in 1831 by one Munda Bhandari, a member of the family. So also the words in a karar "share and enjoy the produce equally" are not inconsistent with some temporary arrangement of the family made for convenience of enjoyment only. Timmaya Bhandari *vs.* Daramma.* It is apparent that the question whether the document indicates a partition or only a family arrangement consistent with the joint status of the family is one of construction and its solution depends upon the view that may be taken of the intention of the parties to be gathered from the whole of the document. Generally speaking, non-division would have to be inferred where there is provision for (1) accountability to other members (2) restraint of power of contracting debts and (3) prohibition of alienation. But these are not conclusive tests. For instance, there may be words showing division to be the paramount object and in such a case, a clause in restraint of alienation would be looked upon as inconsistent and therefore void. See Dere *alias* Annappu *vs.* Hami.† In this connection, reference may be made to the Transfer of Property Act, Sec. 10, which provides that "where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him."

* Unreported S. A. 276 of 1886. † Unreported S. A. 1739 of 1888, 25—10—1889.

Divisions absolute.

91. Where the assets and liabilities of a family were divided among the several branches by a document which provided that each branch should successively enjoy the share allotted to it and should not be entitled to object to the division on the score of its inequality, but at the same time contained a clause, that none of the branches should contract debts, and that if any necessity arises, all the branches should join and borrow, it was held by the High Court that notwithstanding the last clause, the deed evidenced an absolute partition and that the stipulation in restraint of alienation was inoperative. Dere *alias* Annappu *vs.* Hami.* Likewise, where it appeared from several documents that, besides enjoying lands separately for more than 60 years, the members of the two branches of a family designated one another, not as Anandravans or Ejamans, not as subsidiary Karnavans but as '*Hissadars*' or parceners and there was no indication of a joint family inrerest, it was held the division was complete. Kinhakke *vs.* Derrakke.† To entitle a person or a branch to retain their rights in the family property, "the connection with the family must be kept up either by the exercise of the right to share in the joint family property by joining in the *sacra*, by intermarriage or otherwise." Consequently, where the right of the three branches into which one Akkamma's family was divided so long back as 1859, and there was nothing to indicate a joint interest, the possession of the Defendants was held to be adverse to Plaintiff and the suit for possession was held barred under Art. 127 of the Limitation Act. Muthakke *vs.* Timmappu.‡ Where

* Unreported S. A. 1739 of 1888, 25—10—1889. † Unreported A. S. 67 of 1881, 23—1—1883. ‡ I. L. R. 15 Mad. 186.

otherwise there was a complete division, a joint contributi to the expenses of the family idol would not be incompatib with a divided status. Kaveri *vs.* Manju.*

Effect of division.

92. Of course, division changes the joint character of th family property and the members of divided branch are free to deal wit their share as they like and it is only in case of the extinctio of that branch leaving the share undisposed of, that the righ of the other branches to that share accrues. What is calle *attaldakam* right is a right to succeed by virtue of collateralshi and not the concurrent right of an Anandravan. It does no confer on one divided branch any right to veto alienations b another branch. Kinhakke *vs.* Derrakke.† In Akkamma an others *vs.* Sankra Shetti and others,‡ Plaintiffs contended tha they were members of the same family as the Defendant an they sued to set aside a deed executed by the Defendant to hi own children. It was found that the Plaintiff's branch wa divided from that of the Defendant for more than 30 year during which period the latter had been enjoying the propert in question separately, and it was therefore held that the sui was not sustainable.

Reversion.

93. If the reversioners are of equal grade, a division coul be enforced. Timmaya Bhandari *v* Daramma.§ In Manjamma Shettati *v* Mahalinga Shetti,¶ there was a complete partition among al the branches of a family by common consent in 1860. One o the branches becoming extinct in 1876, Manju Shetti a membe

* Unreported S. A. 975 of 1881, 13—9—1882. † Unreported A. S 67 of 1881, 23—1—1883. ‡ Unreported S. A. 332 of 1887, 6—2—1888 § Unreported S. A. 276 of 1886, 7—1—1887. ¶ Unreported S. A. 158 of 1892, 21—12—1893.

of another branch came into possession of the share of that branch. In a suit by a third branch for participation in that share, it was held that the property could have been held by Manju Shetti only as Ejaman for all the surviving branches and that therefore his possession was not adverse. It may be doubted whether this decision is correct in principle, for admittedly there was a complete division in the family and the members of the branches had ceased to have community of interests with each other. If one of the surviving branches held the property of the extinct branch to the exclusion of the other surviving branch, it is not apparent what there is to prevent title accruing from adverse possession. No doubt, the other surviving branch had a right in the property left by the extinct branch but that right should have been exercised within the time allowed by the Law of Limitation.

Re-Union.

94. A branch may re-unite with the branch from which it has been divided and in such cases the rights to the properties of both the branches accrue to them all, and the family becomes to all intents and purposes an ordinary Aliya Santana family. But these rights will be confined to those branches only who have re-united and not to those who remain separate. In Mundiappu *vs.* Mainda Shetti,* of the four branches of a family which was divided, two viz. the second and the fourth became re-united, living as a joint family. It was held that the Appellant who was the senior lady of the first branch, which had not re-united, was not entitled to a certificate to collect debts due to a deceased member of the re-united family.

* Unreported C. M. A. 311 of 1881, 29—7—1881.

CHAPTER IX.

COMPARISON BETWEEN THE MALABAR LAW AND THE ALIYA SANTANA LAW.

Question stated.

95. It has been assumed in the previous chapters tha both the Marumakkatayam usage o Malabar and the Aliya Santana usage o Canara, are almost identical in their origin and in thei practices. In the constitution of the joint family system, i the method of adoption and the mode of succession by whic the right to the family property is regulated, there seem indeed to be very little difference. But the question whethe the two usages are distinct and independent of each other, th points of resemblance being simply the result of mere coin cidence or chance, or whether they are one and the same witl only such modifications as time and circumstances have worke from without, is one which is very hard to answer. Th question would seem to have more than historical importance since when any new custom is set up, the value to be attache to it would mostly depend upon what the surrounding circum stances are, and also, how far a similar custom would be valic under the Marumakkatayam usage of Malabar. Thus, when a custom of the devolution of one's self-acquired property i favour of the immediate heirs of the acquirer, was set up i opposition to the claims of the members of the family, i became a matter of utmost importance to determine to what extent the Marumakkatayam usage could be relied upon i the decision of the point. See Antamma *vs.* Kaveri.*

* I. L. R. 7 Mad. 575.

Views of the High Court.

96. The views expressed by the High Court in the several cases which came up before it, are conflicting and do not settle the matter beyond dispute. In Munda Chetty *vs.* Timmaju Hengsu,* following the *dictum* of Mr. Strange in his "Manual of Hindu Law," the Court stated that the Aliya Santana system differed from that of Malabar in "more consistently carrying out the doctrine that all rights to property are derived from females." This view was upheld in Subbu Hegade *vs.* Tongu,† where in connection with the marriage system prevailing in Canara, the High Court observed that there was no reason to suppose that there was any distinction between the two systems, and this was followed in Koraga *vs.* Queen.‡ But an opposite view was expressed in Antamma *vs.* Kaveri.§ In Mahalinga *vs.* Mariyamma,¶ however, the High Court in holding that the seniormost member in the family was entitled to the Ejamanship remarked that both the Marumakkatayam and the Aliya Santana systems of inheritance, "probably must have originated from a type of polyandry which prevailed in ancient times, and the natural result of that system would lead to the senior female being the Ejaman of the family."

Similarity of the two races.

97. Whether originally the races in Malabar emigrated from the vicinity of Gokarnum in the North, or whether the Tulu and Canarese people hailed from the South, there is no authentic record of history to shew. But the similarity in the habits and customs of the different communities and

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* 1 M. H. C. R. 380. † 4 M. H. C. R. 196. ‡ I. L. R. 6 Mad. 374.
§ I. L. R. 7 Mad. 575. ¶ I. L. R. 12 Mad. 462.

more than all, their religious practices would seem to point to a common origin, for the resemblance is such that it could hardly be the result of mere accident. The religion of the masses of the Aliya Santana people is essentially demon-worship, though Jainism also prevails among the classes to some extent. The same, too, would appear to be the case in Malabar. Mr. Logan in his "Malabar Manual" at page 184 vol. 1, says: "It is sufficient to remark that the Malayali Hindus are still to a very great extent, demon and ancestor-worshippers; that this was probably their original religious idea, and that, probably with the introduction of agriculture, their religious ideas in which the images of the deities played no important part, received fresh impressions tending towards the phallic cult which still holds them enchained." As regards belief in the evil spirits and in witchcraft, the following remarks at page 174 of the same volume, may not be unfavourably compared with that prevalent among the Aliya Santana people (*ante* para 18); "Down to the present day the power of enchantment and spells is believed in implicitly by the lower and by the semi-educated among the upper classes, and some individuals of the lower classes have a powerful superstitious influence over the higher castes owing to their supposed efficiency in creating enchantments and spells and in bringing misfortunes. And again 'be it noted' wrote Mr. Walhouse, late M. C. S., in the Indian Antiquary for January 1876 'that Malabar is the land *par excellence* of sorcery and magic, the most powerful Bhootas and demons reside there.'" The Honorable Mr. Sturrock in his "South Canara Manual" at page 156 remarks, that "the Bunts, as their name implies (*Bunt* in Tulu=a powerful man, a soldier) were originally a

military class corresponding to the Nayars of Malabar and the use of the term *Nadava* instead of the term Bunt in the northern portion of South Canara points, amongst other indications, to a territorial organisation by 'Nads' similar to that described by Mr. Logan as prevailing in Malabar." In this connection, it may be useful to mention that the Tulu language was used to be written in Malayalam characters though now Canarese letters are gradually taking their place. The difference, however, between the two systems cannot be said to be radical, and can easily be explained by the circumstances and the conditions in which the two peoples are situated.

Difference—management by males.

98. The first and most important difference between the Marumakkatayam usage of Malabar and the Aliya Santana system of Canara is that, in the former the management is vested in males, whereas in the latter, the eldest member, if a female is entitled to the Ejamanship. Even in Canara the "woman's right" in this respect may be said to be of recent birth. There can be no doubt that males only were deemed fit to manage family properties and that hence females were excluded from the management in both the countries. This rule while it is followed intact in Malabar, has been made to give way in Canara as a result of logical reasoning, the argument being, that females being the channel through which succession to the property runs, they must be regarded as the proprietors and consequently Ejamans of the family. As however, the more modern doctrine vests the property equally in both the males and females, the management by a male would no doubt be recognised, if he happened to be the eldest member. Indeed the right of the male in such a case has been upheld

where, by some family arrangement, he has been managing for a series of years and has not misconducted himself.

Marriage-custom.

99. The next point of difference is the custom of the wives remaining in the houses of their husbands under the Aliya Santana system. Though this is not of any practical importance from a legal point of view, this usage was at one time relied upon as a proof of the binding character of the Aliya Santana marriage. In Malabar, a contrary custom *i. e.*, the continual residence of the wife in her Tarwad house seems to prevail to a large extent and it is said that it had its origin in the strong influence of the Brahmins who saw in it an advantage to themselves. (vide Wigram's Malabar Law and custom).

Devolution of self-acquired property.

100. The third point of difference which is of practical importance, is with regard to the devolution of self-acquired property. Whereas in the Marumakkatayam system, self-acquired property lapses to the Tarwad after the death of the acquirer, it devolves under the Aliya Santana system upon the members of the branch of the acquirer, in preference to the claims of the family. Antamma *vs.* Kaveri.* Under the Malabar Marriage Act, however, a moiety will go to the wife and children of the acquirer, and the remainder, to the Tarwad or to the branch of the acquirer, according as he is governed by the one law or the other.

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* I. L. R. 7 Mad., 575.

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At page 66 add to the foot note ‡ I. L. R. 3 Mad. 169.

MADRAS ACT No. IV OF 1896.

An Act to provide a form of marriage for persons following the Marumakkatayam or the Aliya Santana Law.

Preamble.

Whereas it is expedient to enable persons following the Marumakkatayam or the Aliya Santana Law of Inheritance to contract marriages which shall be recognized by Courts of law as legal marriages and to provide for the issue of such marriages; It is hereby enacted as follows:—

Title and application.

1. This Act may be called "the Malabar Marriage Act, 1896," and it shall be applicable to all Hindus domiciled in the Presidency of Madras following the Marumakkatayam or the Aliyasantana Law of Inheritance.

Definitions.

2. In this Act unless there is something repugnant in the subject or context:

Sambandham.

"Sambandham" means an alliance between a man and a woman by reason of which they, in accordance with the custom of the community to which they belong or either of them belongs, cohabit or intend to cohabit as husband and wife.

Children.

"Children" means sons and daughters of parents whose Sambandham has been registered as a marriage under this Act, whether born before or after such registration; but shall not include step-sons or step-daughters. In the case of any one whose personal law permits adoption, "children" shall include adopted sons and daughters.

"Marriage" with its grammatical variations and cognate expressions means, except in section 3, clause *(a)*, the last word of section 3 clause *(c)*, section 15 clause *(a)*, and the last word of section 15, clause *(c)*, a Sambandham registered under the provisions of this Act.

Marriage.

"Tarwad" means and includes all the members of a joint family with community of property governed by the Marumakkatayam or the Aliyasantana Law of Inheritance.

Tarwad.

3. A Sambandham between Hindus both or either of whom follow the Marumakkatayam or the Aliyasantana Law of Inheritance may be registered under this Act as hereinafter provided subject to the following conditions:—

Conditions subject to which a Sambandham may be registered as a marriage.

(a) Neither party must be subject to a personal law of marriage according to which he or she, as the case may be, cannot validly contract a marriage with the other party.

(b) The relation of the parties must not be such in respect of consanguinity or affinity that a Sambandham between them is prohibited by any custom or usage applicable to the community to which they belong or either of them belongs.

(c) Neither party must at the date of the notice under section 5 have a husband or wife living whose Sambandham with her or him has been registered under this Act and which marriage is not null and void under section 15 or with whom she or he is otherwise legally married.

(d) The parties must not belong to different communities between the members of which, according to the custom or usage applicable to either community, cohabitation is prohibited.

(e) The Sambandham must have been formed in accordance with the customary ceremonies, if any, prevailing in the community to which they belong or either of them belongs.

(f) A party to a Sambandham who is a minor must have obtained the consent of his or her legal guardian to the registration of the Sambandham as a marriage.

Appointment of Marriage Registrars.

4. The Local Government may appoint one or more Registrars under this Act either by name or as holding any office for the time being for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under the Malabar Marriage Act, 1896," and is hereinafter referred to as the "Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

Registration.

Notice of intention to register a Sambandham to be given to the Registrar.

5. When it is intended to register a Sambandham as a marriage under this Act, both or either of the parties shall give notice in the form (A) to this Act annexed to the Registrar within whose local jurisdiction either of the parties resided at the time when the Sambandham was formed or within whose local jurisdiction it is intended to form it.

Registrar to file such notices and to maintain the "Marriage Notice Book."

6. The Registrar shall file all such notices and keep them with the records of his office and shall also forthwith enter a true copy of all such notices fairly into a book to be for that purpose supplied to him by the Local Government and to be called "The Marriage Notice

Book." Such book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

Copies of notice to be served on interested parties.

7. (1) Every Registrar shall on receiving any such notice forthwith cause a copy thereof to be affixed to a Notice Board in some conspicuous place in his office; and shall then serve or cause to be served at the expense of the party giving such notice a copy thereof on the other party to the Sambandaham, if both parties have not joined in giving such notice, on the guardians, if any, of the parties thereto, and on the managing members of the Tarwads or families to which they respectively belong.

Withdrawal of notice.

(2) If at any time before registration is effected the party by whom notice was given under section 5 signifies in writing to the Registrar that he withdraws such notice the Registrar shall, thereupon, at the expense of the party withdrawing the same, communicate the fact of withdrawal to the persons mentioned in sub-section (1).

Persons entitled to object to registration of a Sambandham. Grounds on which objection may be taken.

8. (1) Any person entitled to receive a notice under sub-section (1) of section 7, any member of the Tarwad or family of either party or any person having any expectancy of succession to the property, if any, of such Tarwad or family of either party may within one month from the date of such service of notice object to such registration on the ground that such Sambandham or registration is in contravention of the conditions prescribed in section 3.

Procedure of Registrar if objection is taken.

(2) Such objection shall be in writing signed by the person objecting and shall be presented by the objector or his duly authorized

agent to the Registrar who shall file the same in his office. A copy of such objections shall at the expense of the objector be served on the party by whom notice was given under section 5.

(3) On receipt of a notice of objection under section 7, the Registrar shall not proceed to register the Sambandham as a marriage until the expiry of four months from the receipt of such notice unless such notice is in the meantime withdrawn.

Procedure if no objection is taken.

(4) If no such objection be made under this section and if neither party withdraws the notice under section 7, sub-section (2), such Sambandham may at any time, not being less than one month nor more than six months from the service of the notice under section 7, be registered as a marriage.

Person objecting may file a suit in a Civil Court.

9. Any person objecting to the intended registration of a Sambandham may, after complying with the provisions of section 8, file a suit in a competent civil court for a declaratory decree declaring that such registration would contravene one or more of the conditions prescribed in section 3.

Registration to be delayed pending final disposal of suit, if certificate of institution is lodged with Registrar.

10. The Judge before whom such suit is instituted shall thereupon give the person instituting the same a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within four months from the receipt of notice of objection, the Sambandham shall not be registered as a marriage under this Act till the decision of such court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given or such suit or appeal has been withdrawn or dismissed for default.

If such certificate be not lodged within the period prescribed in the last preceding paragraph, or if the suit by the objector be finally dismissed or withdrawn the Sambandham may be registered as a marriage.

Declaration to be signed before registration.

11. Before a Sambandham is registered as a marriage, the parties thereto and three witnesses shall, in the presence of the Registrar, sign a declaration in the form (B) to this Act annexed. If either party is a minor, the declaration shall also be signed by his or her legal guardian, and in every case it shall be countersigned by the Registrar.

Registrar to enter certificate of marriage in "The Marriage Certificate Book."

12. When such declaration has been made, the Registrar shall enter a certificate of marriage in a book to be for that purpose supplied to him by the Local Government and to be called "The Marriage Certificate Book" in the form (C) to this Act annexed and such certificate shall be signed by the Registrar and countersigned by the parties, three witnesses and, if either party is a minor, by his or her guardian also.

Registration at a private residence.

13. Subject to such rules as may be prescribed in that behalf by the Local Government, the Registrar may attend at the private residence of the parties or of the guardian of a party who is a minor for the purpose of such declaration and marriage certificate book being signed by them in his presence.

Fees payable to Registrar.

14. The Local Government shall prescribe the fees payable for the duties to be discharged by the Registrar under this Act.

The Registrar may demand payment of any such fee

before the registration of the Sambandham or performance of any other duty in respect of which it is payable.

The said marriage certificate book shall, at all reasonable times, be open for inspection. The Registrar shall furnish certified extracts from the marriage certificate book upon payment of the fee prescribed by the Local Government therefor and such extracts shall be admissible as evidence of the due registration as marriage of the Sambandham therein mentioned.

15. (1) A marriage shall be null and void only—

Marriage when null and void.

(a) If either party is subject to a personal law of marriage according to which he or she as the case may be cannot validly contract a marriage with the other.

(b) If a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great-great grandfather or great-great grandmother and by reason of such relationship a Sambandham between them is prohibited by any custom or usage applicable to the community which they belong or either of them belongs.

(c) If either party has a husband or wife living whose Sambandham with such party has been registered as a marriage under this Act and such marriage is not null and void under clauses (*a*) and (*b*) of sub-section (1) or with whom she or he has been otherwise legally married.

(2) A marriage shall not be invalid on the ground that the Sambandham or registration contravenes any of the grounds mentioned in section 3 other than those specified in clauses (*a*), (*b*) and (*c*) of sub-section (1).

16. (1) No marriage under this Act shall be held invalid by reason of any irregularity in the giving of notice under section 5 or of failure to give notice under Section 7 to any

Marriage not invalid by reason of irregularity in procedure.

person entitled to receive it, or by reason of any irregularity in the publication or service of the copy of such notice or in complying with the provisions of sections 5, 11 and 12.

(2) But when any person entitled to be served with copy of notice under section 7 has not been so served, it shall be competent to him to institute a suit within three months from the date of registration of the Sambandham for cancellation of such registration on all or any of the grounds mentioned in section 3.

Maintenance.

Maintenance of wife and children.

17. (1) The wife and children shall be entitled to be maintained by the husband or father as the case may be. In a civil suit by the wife or children for maintenance, it shall be open to the husband or father to plead all defences open in such a suit to a Hindu governed by the ordinary Hindu law.

(2) Nothing herein contained shall affect the right of the wife and children to be maintained by the Tarwad.

Guardianship.

Guardianship of minor wife and children.

18. When a man's wife and children are minors maintained by him or his Tarwad, he shall, subject to the provision of the "Guardians and Wards Act, 1890," be the guardian of his wife when she is over fourteen years of age and of his children, provided that such guardianship shall not extend to the right and interest of his wife or children in the property of the Tarwad to which his wife and children belong.

Divorce.

Petition for dissolution of marriage.

19. A husband and wife or either of them may present a petition for dissolution of the marriage in the court of the District Munsif within the local limits of whose jurisdictino

either the husband or wife or in cases in which one of them alone is petitioner the respondent has a permanent dwelling or actually and voluntarily resides or carries on business or personally works for gain at the time when the petition is presented.

Notice to be given to other party, if petition is not joint.

20. A copy of such application when made by one party alone shall be served on the other party to the marriage at the expense of the petitioner.

Court to declare marriage dissolved on motion made within a specified period.

21. Six months after the presentation of a petition by both parties or in cases where the application is made by one party alone six months after the service of notice under section 20, the court shall, on the motion of the applicants or applicant, declare in writing the marriage dissolved; provided that such motion is made within seven days after the expiration of the six months or if the court is closed then that such motion is made on the day on which the court is re-opened. Upon such declaration the marriage shall be deemed dissolved from the date of such declaration; and no declaration made under this section shall be held invalid by reason of any irregularity in complying with the provisions of sections 19, 20 and 21. If no such motion is made within the time hereinbefore prescribed the court shall dismiss the petition.

Maintenance when claimable by a divorced wife.

22. Where a marriage has been dissolved without the consent of the wife, she shall, notwithstanding such dissolution, be entitled to claim maintenance from the husband so long as she remains a Hindu, continues chaste, and does not form a Sambandham or contract a marriage provided that she was not guilty of adultery uncondoned before such dissolution.

Succession to separate property of a married man dying intestate.

23. Where a man following the Marumakkatayam or the Aliyasantana Law of Inheritance dies intestate in respect of his self-acquired or separate property or any portion thereof, one-half of such property or in the event of no member of his Tarwad surviving him the whole of such property shall devolve on his widow if he leaves no children, or on his children in equal shares if he leaves no widow, or on his widow and children in equal shares if he leaves both widow and children.

Succession to separate property of a married woman dying intestate.

24. Where a woman following the Marumakkatayam or the Aliyasantana Law of Inheritance dies intestate in respect of her separate or self-acquired property or any portion thereof one-half of such property shall devolve in equal shares upon her children and, in the event of no member of her Tarwad surviving her, the whole of such property shall devolve on her husband.

Service of notices under this Act.

25. Copies of notices under sub-section (1) of section 7, notice of withdrawal under sub-section (2) of section 7, copies of objections under sub-section (2) of Section 8, shall be served through such officer or court as the Local Government may direct in this behalf, and the law in force for the time being for the service of summons on a defendant in a civil suit shall apply to such service.

FORM (A).

SECTION 5.

Notice of Marriage.

To

....., a Registrar of Marriages under Act for the District of

I hereby give you notice that I intend registering as a marriage under Act the Sambandham between me and the other party herein named and described:—

Name	Names of tarwad and of the managing member thereof	Names of the legal guardians (if any)	Rank or profession or calling	Residence	Age	Caste	The place in which the Sambandham was formed or is intended to be formed
A.B.							
C.D.							

Witness my hand, this day of 189 .

(Signed)

FORM (B).

SECTION 11.

Declaration to be made separately by the Bridegroom and by the Bride.

I, A.B., hereby declare as follows:—

(1) I am a Hindu governed by the Law of Inheritance.

(2) I am years of age.

(3) The registration of my Sambandham with

will not contravene any of the conditions prescribed in section 3 of Act.

(4) I consent to the registration as a marriage of the Sambandham between me and C.D. [or, if the party making the declaration is a minor, "(4) my legal guardian consents to the registration as a marriage of the Sambandham between me and C.D."].

(5) I am aware that, if any statement in this declaration is false and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and fine.

(Signed) A B. (the Bridegroom or Bride).
(„) E.F. (Guardian, if any).
(Countersigned) M.N.,
Registrar of Marriages under Act for the District of

(Signed) G.H.
(„) I.J. } Three witnesses.
(„) K.L.

FORM (C).

SECTION 12.

Marriage Certificate.

I, E.F., certify that, on the of 189 , appeared before me A.B. and C.D., each of whom in my presence and in the presence of three witnesses, whose names are signed hereunder, made the declarations required by Act and that the Sambandham between them was registered as a marriage under the said Act in my presence.

(Signed) E.F.,
Registrar of Marriages under Act for the District of

(Signed) A.B.
(„) C.D.
(„) M. N. (Guardian, if any).

(Signed) G.H.
(„) I.J. } Three witnesses.
(„) K.L.

Dated the day of 189 .

ಭೂತಾಳಪಾಂಡ್ಯ.

ಶಾಲಿವಾಹನ ಶಕ ವರುಷ ೧೨೯೦ ಈಶ್ವರನಾಮ ಸಂವತ್ಸರದಲ್ಲಿ ದೇವ ಪಾಂಡ್ಯನ ಅಳಿಯ ಭೂತಾಳಪಾಂಡ್ಯಗೆ ಮಾಘ ಶು ೩ ಯೂ ಶುಕ್ರವಾರ ಉತ್ತಾಭಾದ್ರಾ ನಕ್ಷತ್ರವೃಷಭ ಲಗ್ನದಲ್ಲಿ, ದೇವೇಂದ್ರ ವಿಕ್ರಮಾದಿತ್ಯಗೆ ಕೊಟ್ಟ ಸಿಂಹಾಸನದಲ್ಲಿ, ವಿಜಯ ನಗರದಲ್ಲಿ, ಪಟ್ಟಾಭಿಷೇಕವಾಯಿತು. ಅದು ಯಂ ತೆಂದಡೆ—ಪಾಂಡ್ಯ ದೇಶದಲ್ಲಿ ವೊಬ್ಬ ದೇವಪಾಂಡ್ಯನೆಂಬ ಸಾವುಕಾರನು ಹೊಸ ಹಡಗುಗಳಂ ಕಟ್ಟಿಸಿ, ಅದರಲ್ಲು ಲಕ್ಷಾಂತ್ರ ವರಹಾನ್ನ ವೊಡವೆ ವಸ್ತುಗಳನ್ನ ತುಂಬಿಸಿ, ಹಡಗುಗಳಂ ಇಳಿಸುವ ಸಮಯದಿ, ಆಗ ಹೊಸ ಹಡಗುಗಳೆಂಬ ದೃಷ್ಟಿಯಿಂದ ಕುಂಡೋದರ ಯಂಬ ಶಿವಗಣವು ನರಬಲಿಯಂ ಬೇಡುತ್ತಿದ್ದಂ. ಆಗ ದೇವಪಾಂಡ್ಯನು ತನ್ನ ಮನೆಗಂ ಬಂದು, ತನ್ನ ಹೆಂಡತಿಯಿಂ ಆಲೋಚನೆ ಯಂ ಮಾಡಿ, ಯೇಳು ಮಂದಿ ಮಕ್ಕಳಿಂದ ಅವನ ಬಲಿಯುಂ ಕೊಡುವಾ ಯಂದು ಆಲೋಚನೆಯಂ ಮಾಡುತಿಪ್ಪ ವೇಳ್ಯದಲ್ಲಿ, ಆಗ ಆತನ ಹೆಂಡತಿ ಈ ಯೇಳು ಮಂದಿ ಮಕ್ಕಳಂ ಕರಕೊಂಡು, ತನ್ನ ತೌರು ಊರಿಗಂ ಹೊರಟು ಹೋದಳು. ಆಗ ಈ ದೇವಪಾಂಡ್ಯನೆಂಬ ಸಾವುಕಾರನು ತನ್ನ ಮನೆಯಲ್ಲಿ ಅನ್ನ ನೀರು ಬಿಟ್ಟು, ಬಹಳ ದುಖ್ಖಿತನಾಗಿ ಮಲಗಿರೆ, ಆ ವೇಳ್ಯದಲ್ಲಿ ಈ ಸುದ್ದಿ ಯನ್ನು ಆತನ ತಂಗಿಯಾದ ಸತ್ಯವತಿ ಯಂಬವಳು ಕೇಳಿ, ಬಂದು, ಅಂಣನ ಮಾತನಾಡಿಸಿ, ವೃತ್ತಾಂತಂಗಳಂ ಕೇಳಿ, ಈ ಸ್ವಲ್ಪ ಕೆಲಸಕ್ಕೆ ನೀನು ಭಯ ಪಡ ಬೇಡಾ, ನನ್ನ ಮಗ ಜಯಪಾಂಡ್ಯನೆಂಬ ಬಾಲಕನ ನರಬಲಿಯಂ ಕೊಡು, ಈಗ ಯೆದ್ದು ಊಟ ಉಪಚಾರಗಳಂ ಮಾಡು ಯಂದು ವೊಡಂಬಡಿಸಿ, ತನ್ನ ಮಗ ಜಯಪಾಂಡ್ಯನನ್ನು ಕೊಟ್ಟು, ಗಂಡನ ಮನೆಗೆ ಹೊರಟು ಹೋದಳು. ಆ ಜಯಪಾಂಡ್ಯನ್ಯಾರಂದರೆ: ಆ ರಾಜ್ಯದ ವೀರಪಾಂಡ್ಯನೆಂಬ ಅರಸನ ಮಗ. ಆತ ಚಂದ್ರಾಂಗದ ರಾಯನಿಂದ ಪರಾಜಿತನಾದವ. ಆದ್ದರಿಂದ ಬಲಿಯಂ ಕೊಡುವ ವೇಳೆಯಲ್ಲಿ ಈತ ಮಹಾಪುರುಷನೆಂದು ತಿಳಿದು, ಆ ಕುಂಡೋದರ

ನೆಂಬ ಭೂತಾರಾಜನು ಈ ದೇವಪಾಂಡ್ಯನ ಹಡಗುಗಳಿಗೆ ಬಲಿ ತೆಗದು ಕೊಳ್ಳದೆ ಬಿಟ್ಟು, ಈ ಜಯಪಾಂಡ್ಯನೆಂಬ ಬಾಲಕಗೆ ಪ್ರಸನ್ನನಾಗಿ ಇಂತ್ತೆಂದಂ—ನಾನು ನಿನಗೆ ಪ್ರಸನ್ನವಾದಕಾರಣ ಯಂತ್ತೆಂದಡಾ—ನೀನು ನನ್ನ ಹೆಸರಂಗೊಂಡು, ಭೂತಳಾಧಿಪನಾಗಿ, ಭೂತಾಳಪಾಂಡ್ಯನೆಂಬ ಹೆಸರಂ ನೀನು ಕೊಂಡಲ್ಲಿ, ನಿನ್ನ ಪರಾಜಿತ ಮಾಡಿದ ಚಂದ್ರಾಂಗದನಾಳಿದ ಸಮಸ್ತ ರಾಜ್ಯವನ್ನು ಶಿವನ ಅಪ್ಪಣೆ ಯಿಂದ ಕೊಟ್ಟೆ ಯಂದು, ಆ ಭೂತರಾಜನು ಅಕ್ಷಣದಲ್ಲಿ ಉಜ್ಜಯನಿ ಯಂಬ ನಗರವಂ ಪೊಕ್ಕು, ಅಲ್ಲಿ ಅಷ್ಟ ಭೈರವಾದಿ ದೇವತೆಗಳಂ ಜಯಿಸಿ, ಅಲ್ಲಿ ವಿಕ್ರಮಾರ್ಕಗೆ ದೇವೇಂದ್ರನು ಕೊಟ್ಟ ಪ್ರತಿನಿಧಿಸಿಂಹಾಸನವನ್ನು ಈ ಭೂತಾಳಪಾಂಡ್ಯಗೆ ಕೊಟ್ಟು, ಆ ಭೂತಾಳಪಾಂಡ್ಯರಾಯ ಸಹಿತನಾಗಿ ಜಯಂತಿಕಾನಗರಕ್ಕೆ ಬಂದು ಪ್ರವೇಶವಾದರು.

ಅಲ್ಲಿ ಪಟ್ಟಸಿಂಹಾಸನನನ್ನು ಆಳುವ ಸಿದ್ಧವೀರಪ್ರಸಿದ್ಧರಾಯನು ರಾಜ್ಯ ಭಾರ ಮಾಡಿ ಕೊಂಡು ಇರುವಾಗ್ಯೆ, ಆ ಅರಸಿಗೆ ಈ ಕುಂಡೋದರನು ನಾನಾ ಉಪಪತಿಗಳಂ ಕೊಟ್ಟು, ಸಂಹರಿಸಿ, ಆ ಸಿದ್ಧವೀರಪ್ರಸಿದ್ಧರಾಯಗೆ ಸಂತಾನ ಇಲ್ಲ ದಕಾರಣ, ಆವಾಗ ಸಮಸ್ತ ಪ್ರಜೆ ಪರಿವಾರಗಳು ಕೂಡಿ, ಆನೆ ಸುಂಡಿಲೊಳು ಹೂವಿನ ಮಾಲೆಯಂ ಕೊಟ್ಟು, ಮೆರವಣಿಗೆ ಮಾಡುವ ಸಮಯದಲ್ಲಿ, ಆ ಆನೆ ಯು ಈ ಜಯಪಾಂಡ್ಯನೆಂಬ ಬಾಲಕನ ಕೊರಳಿಗೆ ಹೂಮಾಲೆ ಹಾಕಿ ದೇವೇಂ ದ್ರನ ಸಿಂಹಾಸನದಲ್ಲಿ ಆ ಬಾಲಕನ್ನ ಕುಳ್ಳಿರಿಸಿ, ಮೊದಲು ಹೇಳಿದ ಲಗ್ನಕಾಲದಲ್ಲಿ ಈ ಸಿಂಹಾಸನ ಸಹಿತವಾಗಿ ಬಾಲಕನ್ನ ತಂದು, ಆ ಅರಮನೆಯ ಸಭಾಮಧ್ಯ ದಲ್ಲಿ ಇಟ್ಟು, ಈ ಗಜೇಂದ್ರನು ಯರಗುತ್ತಿರಲು, ಆಗ ಸಮಸ್ತ ಪ್ರಜೆ ಪರಿವಾರ ಗಳು ಅವನನ್ನು ಪಟ್ಟಾಭಿಷೇಕನಂ ಮಾಡಿ, ಪಟ್ಟಾಕಟ್ಟಿ, ಉಡುಗರೆ ಉಚಿತ, ಪಟ್ಟಾ ಪಟ್ಟ ಕಾಣಿಕೆಯ ಮಾಡಿಸಿ, ತಮ್ಮ ತಮ್ಮ ಮನೆಗಳಿಗೆ ಹೋದರು.

ಆ ಮೇಲೆ ಆರು ವರ್ಷ ಪರ್ಯಂತರ ಆ ಅರಸನು ರಾಜ್ಯಭಾರ ಮಾಡಿ ಕೊಂಡಿರುವ ಮಧ್ಯದಲ್ಲಿ, ಆ ವೇಳ್ಯ ಮಕ್ಕಳ ಸಂತಾನವಂ ತೆಗದು, ಅಳಿಯ ಸಂತಾನವಾದ ಕಾರಣ ವೆಂತೆಂದಡಾ—ಆರನೇ ವರುಷ ಚಿತ್ರಭಾನು ಸಂವತ್ಸರ ದಲ್ಲಿ ಆ ದೇವಪಾಂಡ್ಯನ ಹಡಗುಗಳು ಗರಿಗತ್ತಲೆ ಹಿಮು ಮುಸುಕಿದ ದ್ವೀಪಾಂ ತರಕ್ಕೆ ಹೋಗಿ, ಅಲ್ಲಿ ನಂದು ಕಡೆ ಕೆಸರಲ್ಲಿ ಹೂಳಿ, ಆಗ ಆ ಹಡಗುಗಳಲ್ಲಿ ತುಂಬಿಸಿದ ಜೀನಸು ನೀರು ಸಹಾ ಖರ್ಚು ಆದ ವೇಳ್ಯದಲ್ಲಿ, ಈ ದೇವಪಾಂ ಡ್ಯನ ಕಡೆ ಆ ಹಡಗುಗಳ ಮೊಕ್ತಸ್ತನಾರಾಯಣಪಾಂಡ್ಯ ಯಂಬಾತನೂ ಆ

ಹಡಗುಗಳ ಜನರುಗಳೂ ದುಖ್ಖ ಪಡುತ್ತಿರುವ ಸಮಯದಿ, ಈ ಕುಂಡೋದರನು ಪ್ರಸನ್ನನಾಗಿ, ಯಲೇ ನಾರಾಯಣಪಾಂಡ್ಯನೇ ಕೇಳು, ನೀನು ಭಯ ಪಡಬೇಡಾ! ಇದರಿಂದ ಪಶ್ಚಿಮದಿಕ್ಕಿನಲ್ಲಿ ವಂದು ಪರ್ವತ ಉಂಟು. ಅಲ್ಲಿ ಹಿಂದೆ ಸಿದ್ಧರು ಮಾಡಿದ ಸಿದ್ಧರಸಗಳುಂಟು ಹಸರುತಿಲೆಗಳುಂಟು. ಆ ಸಿದ್ಧರಸಗಳ ಕೊಪ್ಪರಿಗೆ ಮೊದಲಾದ ಪಾತ್ರಗಳಲ್ಲಿ ತುಂಬಿಸಿಕೊ. ಆ ಹಸರುತಿಲೆಗಳನ್ನು ತುಂಬಿಸಿಕೊ. ಆಗ್ಯೆ ತನ್ನ ಪ್ರಾರ್ಥನೆಯಂ ಮಾಡು. ಆಗ ಈ ಮೂರು ಹಡಗುಗಳೂ ಯೇಳುತ್ತಾವೆಂದು ನುಡಿದು ಹಿರಿಯುತ್ತಿದ್ದಂ. ಆಗ ಬಿಡದೋಣಿಗಳ ಬಿಟ್ಟು ಹಸರುತಿಲೆ ಸಿದ್ಧರಸಗಳ ತುಂಬಿಸಿ, ಕುಂಡೋದರಗೆ ಪ್ರಾರ್ಥನೆಯಂ ಮಾಡಲು, ಆ ವೇಳ್ಯದಲ್ಲಿ ಮಹಾ ಸುಳಿಘಾಳಿಗಳೆದ್ದು, ಆ ಹಡಗುಗಳು ಹಂಗಾರಕಟ್ಟೆ ಯಂಬ ಅಳವೇ ಬಾಗಲಿನಿಂದ ವೊಳಗಾಗಿ, ಕಲ್ಯಾಣಪುರದಲ್ಲಿ ನೆಲೆಗೊಂಡವು. ಆಗ ಅಲ್ಲಿಯ ಸಾವಕಾರರುಗಳು ಬಂದು, ಶ್ಲಾಘಿಸ್ಟ ಮಾಡುವಾಗ್ಯೆ, ಅದರಲ್ಲಿ ಹಸರುತಿಲೆ ಸಿದ್ಧರಸ ಸಹಾ ಇರುವದರಿಂದ, ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯಗೆ ಅರಿಕೆ ಮಾಡಿದರು. ಆಗ ಆ ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯನು ಬಂದು, ಯರಡನೆ ಶ್ಲಾಘಿಸ್ಟ ಮಾಡುವ ವೇಳ್ಯದಲ್ಲಿ, ತನ್ನ ಮಾವನಾದ ದೇವಪಾಂಡ್ಯನ ಹಡಗುಗಳಾದ ಕಾರಣ, ಆ ವೇಳ್ಯದಲ್ಲಿ ಪಾಂಡ್ಯ ದೇಶಕ್ಕೆ ಕಳುಹಿಸಿ ಕೊಟ್ಟು, ತನ್ನ ಮಾವ ದೇವಪಾಂಡ್ಯನ್ನ ಕರಸಿ, ನಿನ್ನ ಹಡಗಿನಲ್ಲಿ ಬಂದ ವಡವೆ ವಸ್ತುಗಳ ತೆಗದು ಕೊಂಡು ಹೋಗು ಯಂತಾ, ಈ ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯನು ಹೇಳುತ್ತಿರುವ ಸಮಯದಲ್ಲಿ, ಆಗ ಈ ಕುಂಡೋದರನು ಈತನ ಮಕ್ಕಳೊಳಗೆ ಯಾರನ್ನಾದರೂ ಬಲಿಯಂ ಕೊಡದೆ, ಈ ಹಡಗುಗಳ ಬಿಡೆ ಯಂದನು. ಆಗ ತನ್ನ ಹೆಂಡತಿ ಮಕ್ಕಳನ್ನ ಕರಸಿ, ಈ ವಡವೆ ವಸ್ತುಗಳ ತೋರಿಸಿ, ಇದರೊಳಗೆ ಯಾರನ್ನಾದರೂ ನರಬಲಿಯಂ ಕೊಡುವ ಯಂತಾ ಹೇಳಿ, ಆಲೋಚಿಸುವ ಸಮಯದಲ್ಲಿ, ಈ ಹತ್ತುಸಾವಿರ ಮಹಾಜಗತ್ತಿನವರ ಮುಂದೆ ಈ ವಡವೆ ವಸ್ತುಗಳಿಗೆ ಕಾರಣವಿಲ್ಲವೆಂದು ಇಳಿದು ಹೋದಳು. ಆಗ್ಯೆ ಈ ಹತ್ತು ಸಾವಿರ ಮಹಾಜಗತ್ತಿನವರು ಅರಸು ಪ್ರಜೆ ಪರಿವಾರ ಮೊದಲಾಗಿ ಈ ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯನ ಆದಿ ವೃತ್ತಾಂತಂಗಳಂ ತಿಳಿದು, ಈ ಸಿದ್ಧರಸ ಸಿದ್ಧಶಿಲೆಗೆ ಈ ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯನೇ ಬಾಧ್ಯಸ್ಥನೆಂದು, ಈ ಜನರುಗಳ ನಿವೃತ್ತಿ ಪ್ರಕಾರಕ್ಕೆ ಆ ಸಿದ್ಧರಸಗಳನ್ನೂ ಸಿದ್ಧಶಿಲೆಗಳನ್ನೂ ತಾನೇ ಬಾಧ್ಯಸ್ಥನಾಗಿ ತೆಗದು ಕೊಂಡು, ಆ ಸಿದ್ಧರಸವನ್ನು ಸೋಮೇಶ್ವರನ ಸನ್ನಿಧಿಯಲ್ಲಿ ರಸಭಾವಿ ಮಾಡಿ ಇರಿಸಿ, ಆ

ಸೋಮೇಶ್ವರಗೆ ಸಿದ್ಧೇಶ್ವರನೆಂಬ ಹೆಸರಿಟ್ಟು, ಆಗ ಈ ಕುಂಡೋದರಗೆ ಸ್ಥಾನ ಮಾನಗಳ ಕಟ್ಟ, ಆ ತಕ್ಕ ಬಿಂಬವನ್ನು ಪ್ರತಿಷ್ಟೆ ಮಾಡಿ, ಮಹೀಸಾಲಕನಾದ ಮಹಿಷಾಸುರನೆಂಬ ಹೆಸರಿಟ್ಟು, ಆತನಿಗೆ ಬಲಿ ಕೊಡುವದಕ್ಕೆ ಸಹಸ್ರ ಪಡಿ ಅಕ್ಕಿ, ಸಹಸ್ರ ಪಡಿ ಅರಳು ಅವಲಕ್ಕಿ, ಸಹಸ್ರ ಕಾಯಿ ತೀಯಾಳ ಬಾಳೇ ಹಣ್ಣು, ಸಹಸ್ರ ಪಟ್ಟ ವೀಳ್ಯದೆಲೆ, ಹಿಂಗಾರ ಧೂಪದೀಪಾದಿಗಳಿಂದ ಅಜ ಕುಕ್ಕುಟ ಸಹಸ್ರವಾದ ಬಲಿಯಂ ಕೊಟ್ಟು, ಸಮಸ್ತ ಪ್ರಜೆ ಪರಿವಾರಗಳು ಪ್ರಾರ್ಥನೆಯಂ ಮಾಡುವ ಸಮಯದಲ್ಲಿ, ಈ ಕುಂಡೋದರನು ವಬ್ಬ ಮನುಷ್ಯನ ಮೈ ಮೇಲೆ ಬಂದು, ಅರಸುಗಳಿಗೂ ಪ್ರಜೆಗಳಿಗೂ ವಂದೇ ಕಟ್ಟನಲ್ಲಿ ನಡಿಯ ಬೇಕೆಂಬ ನಂಬಿಗೆಯಂ ಕೊಟ್ಟು, ಯಲ್ಲವರೂ ವಂದೇ ಬುದ್ಧಿಯಿಂದ ನಡಕೊಳ್ಳುತ್ತೇನೆ ಯಂಬ ಕಟ್ಟು ಕೈ ಹಿಡಿದ ಮೇಲೆ, ಅರಸುಗಳಿಗೂ ಪ್ರಜೆಗಳಿಗೂ ಅಳಿಯ ಸಂತಾನದಲ್ಲಿಯೇ ನಡೆಯ ಬೇಕೆಂಬ ಹದಿನಾಲ್ಕು ಕಟ್ಟಳೆ ಕಟ್ಟು, ಹದಿನಾರು ಕಟ್ಟಳೆ ಸಹಾ, ಜಗತ್ತಿನ ನರಸಿಂಹ ದೇವರ ಮಧ್ಯಮಂಟಪದಲ್ಲಿ ಬರಸಿ, ಜಗತ್ತಿನ ಅನಂತೇಶ್ವರ ದೇವರ ಮಧ್ಯಮಂಟಪದಲ್ಲಿ ಸ್ಥಾಪನೆಯಂ ಮಾಡಿ, ಈ ಕಟ್ಟು ಕಟ್ಟಳೆ ಮೀರಿ ನಡದವನ ಸಂತಾನ ನಿಸ್ಸಂತಾನವಾಗಿ ಹೋಗಲಿ ಯಂತಾ ಕಟ್ಟು ಕೈ ಹಿಡಿದು, ಬಳಿಸಾಪಿರ ಬ್ರಹ್ಮನಂ ಈ ಮಹಿಷಾಸುರನಂ ಈ ಕಟ್ಟಿಗೆ ಅಧಿದೇವತೆಗಳೆಂದೂ, ಈ ನರಸಿಂಹ ಅನಂತೇಶ್ವರ ಕುಲದೇವತೆಗಳೆಂದೂ, ದಿಕ್ಕು ದಿಕ್ಕಿನಲ್ಲಿ ಈ ಪ್ರಜೆ ಪರಿವಾರಗಳಿಗೆ ಬ್ರಹ್ಮನಂ ಅನಂತೇಶ್ವರ ದೇವಸ್ಥಾನದ ಕ್ಷೇತ್ರಪಾಲನಂ, ಈ ಜಗತ್ತಿನ ನರಸಿಂಹ ದೇವರ ಬಲಭಾಗದ ರಕ್ತೇಶ್ವರಿಯಂ, ಈ ಕುಂಡೋದರ ಮಹಿಷಾಸುರನಂ, ಈ ೧೮ ಬಳಿ ಅಳಿಯ ಸಂತಾನಕ್ಕೆ ಸ್ಥಾನ ದೇವತೆಗಳೆನಿಸಿ, ಈ ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯನು ಹನ್ನೆರಡು ವರುಷ ರಾಜ್ಯವನ್ನಾಳುತ್ತಿರುವ ಮಧ್ಯದಲ್ಲಿ, ಈ ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯಗೆ ಕಲ್ಲಾಣ ಆಗಲೋಸ್ಕರ, ಘಟ್ಟದ ಮೇಲೆ ಕಳುಹಿಸಿ ಕೊಟ್ಟು, ಅಲ್ಲಿ ಜೈನರ ಜಾತಿ ಕೆಸವಂಣ ಬಸವಂಣ ಯಂಬವರ ಕರಸಿ, ಅವರ ಮುಖದಲ್ಲಿ ಹನ್ನೆರಡು ಕನ್ನಿಕೆಯರ ಕರಿಸಿ, ಲಗ್ನವಂ ಮಾಡಿಕೊಂಡು, ಆ ಜಯಂತಿಕಾ ಯಂಬ ನಗರಕ್ಕೆ ಹನ್ನೆರಡು ಕನ್ನಿಕೆಯರ ವಿವಾಹವಾದ ಕಾರಣ, ಬಾರಕನ್ಯಾಪುರ ಯಂಬ ಹೆಸರಂ ಇಟ್ಟು, ಆ ಹನ್ನೆರಡು ಕನ್ನಿಕೆ ಪಟ್ಟದ ರಾಣಿಯರಿಗೆ ಹನ್ನೆರಡು ಬಸ್ತಿ ರಚಿಸಿ, ಹನ್ನೆರಡು ಶಿವಾಲಯ, ಹನ್ನೆರಡು ವಿಷ್ಣು ಆಲಯ, ಹನ್ನೆರಡು ದುರ್ಗಾಲಯ, ಹನ್ನೆರಡು ಗಣಪತಿ, ಹನ್ನೆರಡು ನಾಗ, ಬ್ರಹ್ಮ, ಕ್ಷೇತ್ರಪಾಲ, ರಕ್ತೇಶ್ವರಿ, ಮಹಿಷಂತಾಯ

ಯಂಬ ಸ್ಥಾನಗಳಂ ರಚಿಸಿ, ಆಗ ಚಾತುರ್ವರ್ಣ್ಯ ಗುಡಿ ಮನೆಗಳ ಉಂಟು ಮಾಡಿ, ಆ ಚತುರಪ್ರದಲ್ಲು ನಗರೇಶ್ವರನ ಪ್ರತಿಷ್ಟೆಯಂ ಮಾಡಿ, ತಾನು ತಾನೆಂಬ ಬಿರಿದಾವಳಿ ಯಂತೆಂದಡಾ.

ಶ್ರೀಮದ್ರಾಜಾಧಿರಾಜ, ರಾಜೇಂದ್ರಸಿಂಹಾಸನಾಧೀಶ್ವರ, ತುಳು ಮಲೆಯಾಳ ಹೈಗ ಕರ್ನಾಟಕ ಚತುರ್ದೇಶಾಧಿಪಾಧೀಶ್ವರ, ಶಾಲಿವಾಹನಶಕಾದಿ ಪುರುಷ, ಚೌಷಷ್ಟಿ ಪ್ರಧಾನ ಯೋಗಯೋಗೇಶ್ವರ, ವೀರಪಾಂಡ್ಯಕುಮಾರ, ಸತ್ಯವತಿ ಬಾಲ, ಜನಕುಲನಿಜಿಕ್ಷಾತ್ರ ಭೂತಳಾಧೀಶ, ವೀರಾದಿವೀರ, ವೀರಮಹಾಪ್ರತಾಪಧೀರ, ವಸಂತವೀರ, ಬಾರಕಂನ್ಯಾಪುರವರಾಧೀಶ್ವರ.

ಆಗ ಈ ಜಗತ್ತಿನ ಷೋಡಷ ಮರ್ಯಾದೆಗಳ ಕೈಕೊಂಡು, ಈ ಜಗತ್ತಿನ ಮಹಾ ಜನರುಗಳ ಆರಾಧನೆ ಮಾಡಿ ಕೊಂಡು, ಗುರು ದೇವರ ಭಕ್ತನಾಗಿ, ದುಷ್ಟನಿಗ್ರಹ, ಶಿಷ್ಟಪರಿಪಾಲತ್ವ ಉಳ್ಳವನಾಗಿ, ಆವಾವ ಜಾತಿ ಧರ್ಮಗಳನ್ನು ನಡಯಿಸಿಕೊಂಡು ಬರುವ ಸಮಯದಲ್ಲಿ, ಈ ಹನ್ನೆರಡು ಪಟ್ಟದ ರಾಣಿಯರಿಗೆ ಹೆಂಣು ಗಂಡು ಮಕ್ಕಳು ಸಮನಾಗಿ ಹುಟ್ಟುತ್ತಾ ಇರುವಲ್ಲಿ, ಆತನ್ಮಧ್ಯದಲ್ಲಿ, ಹನ್ನೆರಡು ಮಂದಿ ಮಕ್ಕಳಿಗೆ ತನ್ನ ರಾಜ್ಯದಿಂದ ಸುರಜಿಗಳ ವಿಂಗಡಿಸಿ, ಅಂನ್ಯತನಾಗಿ ಕೊಟ್ಟ ಅರಸುಗಳ ವಿವರ— ಚವುಟ ಬಂಗರೆಂಬ ಸಂಸ್ಥಾನವೆರಡು. ಮೂಲರ ತುಳುವರರೆಂಬ ಅರಸ್ತನವೆರಡು. ಅಜಲ ಸಾವಂತರೆಂಬ ಧೊರೆತನ ವೆರಡು. ಭೈರಸ ಭಾರಸ ಯಂಬ ದಿವಾನರೆರಡು. ಕುಂದ ಬುಂನಾಳರೆಂಬ ವಡ್ಡು ಯರಡು. ನೇರಂಕಿ ಕಡರೀಶರೆಂಬ ಚಾವಡಿ ಯರಡು. ಈ ಹನ್ನೆರಡು ನುಂದಿ ಅರಸುಗಳಲ್ಲಿ ಚವುಟ ಬಂಗರು ಮುಖ್ಯ. ಈ ತುಳುವರ ಪಕ್ಷ ಯರಡರ ಪಕ್ಷನಾಥರ ಪ್ರತಿಪ್ರಭುಗಳೆನಿಸಿ, ಈ ಕೆಸವಂಣ ಬಸವಂಣನಿಂದ ಉಂಟಾದ ಮುವ್ವತ್ತೆರಡು ಪೇಟೆ ಪಟ್ಟಣವೆಂಬ ನಗರಕ್ಕೆ, ಈ ಮಕ್ಕಳ ಸಂತಾನವಾದ ಸಪ್ತ ಗೋತ್ರಕ್ಕೆ ಈ ಅಳಿಯ ಸಂತಾನವಾದ ೧೮ ಬಳಿಗೂ ಈ ಉಭಯ ಪಕ್ಷನಾಥರು ಪಕ್ಷಪ್ರಭುಗಳು, ಈ ತುಳುವರ ಅರಸುಗಳಾದ ಉಭಯ ಪಕ್ಷನಾಥರುಗಳು ಬಲ್ಲಾಳರಾದ ಇವರುಗಳಿಗೆ ಈ ಜಾತಿಗಳ ತಿದ್ದಪಡಿಗಳ ಮಾಡಿಕೊಂಡು ಬರ ಬೇಕೆಂದು ನೇಮಿಸಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಆ ಪ್ರಕಾರದಲ್ಲಿ ೭೫ ವರುಷವನ್ನು ಸಾಂಬ್ರಾಜ್ಯವನ್ನಾಳಿ, ತನ್ನ ಅಳಿಯನಾದ ವಿದ್ಯುದ್ಯುಮ್ನಪಾಂಡ್ಯ ರಾಯಗೆ ರಾಜ್ಯಭಾರವನ್ನು ನೇಮಿಸಿ, ಆ ವಿದ್ಯುದ್ಯುಮ್ನಪಾಂಡ್ಯ ರಾಯನು ೮೧ ವರುಷ ರಾಜ್ಯಭಾರವ ಮಾಡುವ ಮಧ್ಯದಲ್ಲಿ,

ಆತಗೆ ೧೨ ಮಂದಿ ಪಟ್ಟದ ರಾಣಿಯರಲ್ಲಿ ಹುಟ್ಟದ ಮಕ್ಕಳಿಗೆ ವಿಂಗಡಿಸಿ ಕೊಟ್ಟ ಜುಂಗಡಿ ಅರಸುಗಳ ವಿವರಾ—ಮರದಡೆ ಮಾರಂಬಡೆ ಯಂಬ ಅಡೆ ೨. ಕಟ್ಟ ಪಾಡಿ ಕೂಳೂರು ಯಂಬ ಧೊರೆಬಲ್ಲಾಳ ೨. ಪಡುಬಿದ್ರೆ ಇರವತ್ತೂರು ಕಿಂ ನರಿಬಲ್ಲಾಳ ೨. ಮುದುರು ಮುದ್ದಾಲ ಯಂಬ ಕಿಂನರಿಅರಸುಗಳು ೨. ಯಳ ನಾಡು ಐನಾಡು ಹೆಗ್ಗಡೆ ೨. ಮುದ್ರಾಡಿ ಕಾಂತಾವರ ಕಿಂನರಿಹೆಗ್ಗಡೆ ೨. ಇವು ೧೨ ನುಂದಿ ಜುಂಗಡಿ ಅರಸುಗಳು. ಸಟ್ಟವಾಗಿ ಒನೇ ನರುಷದಲ್ಲಿ ಉಂ ಟಾದ ಕಥೆಯ ವಿವರ: ಆ ವಿದ್ಯುದ್ಯುಮ್ನಪಾಂಡ್ಯ ರಾಯಗೆ ಈ ಕುಂಡೋದ ರನು ಅಂತರವಾಣಿಯಾಗಿ, ಕಲಿಯುಗ ಬಂದ ಕಾರಣ, ಈ ಹಸರುತಿಲೆ ರತ್ನ ಭಂಡಾರಗಳನ್ನು ಸ್ಥಾಪನೆ ನುಾಡಿ, ರಸಭಾವಿಗೆ ಕಲ್ಲು ಮುಚ್ಚಿ, ನಾಗರ ಪ್ರತಿಷ್ಟೆ ಯಂ ನುಾಡಿ, ಈ ಚೌಟ ಬಂಗ ಮೊದಲಾದ ಅರಸುಗಳಿಂದ ಕಪ್ಪಗಳ ತೆಗದು ಕೊಂಡು, ಆತನು ೮೧ ವರುಷ ರಾಜ್ಯವಾಳಿ ಮೃತವಿಟ್ಟ ಮೇಲೆ, ಆತನ ಸಂತಾನ ಯೇಳು ತಲೆ ಪರ್ಯಂತರ ಆಳಿದ ಅರಸುಗಳು: ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯ ೭೫, ವಿದ್ಯುದ್ಯುಮ್ನಪಾಂಡ್ಯ ರಾಯ ೮೧, ವೀರಪಾಂಡ್ಯ ರಾಯ ೩೨, ಚಿತ್ರವೀರ್ಯ ಪಾಂಡ್ಯ ರಾಯ ೧೬, ದೇವವೀರಪಾಂಡ್ಯ ರಾಯ ೯, ಬಲವೀರ್ಯಪಾಂಡ್ಯ ರಾಯ ೧೯, ಜಯವೀರ್ಯಪಾಂಡ್ಯ ರಾಯ ೨೭, ಅಂತು ಅರಸುಗಳು ೭೨ ವರುಷ ೨೫೯ ರಾಜ್ಯವಾಳಿದರು.

ಕಟ್ಟುಗಳ ವಿವರ.

ಬ್ರಾಹ್ಮಣರಹೊರ್ತು ತ್ರಿವರ್ಣಜಾತಿಗಳಿಗೆ ಮಾಡಿದ ೧೪ ಕಟ್ಟುಗಳು ಯಂ ತೆಂದಡೆವು: ಜಾತಿ, ನೀತಿ, ಮಾನ, ಮರ್ಯಾದಿ, ಹುಟ್ಟು, ಕಟ್ಟು, ಹಿಂದೆ, ಮುಂದೆ, ಹೆಚ್ಚು, ಕಂಮಿ, ಬಳಿ, ಬಂಣ, ಅಳಿ, ಉಳಿ, ಇವು ೧೪ ಕಟ್ಟುಗಳು. ಇದರ ವಿವರ.

ಜಾತಿ ನೀತಿ ಯಂದಡೆ—ಆಯಾ ಜಾತಿ ಸ್ವಧರ್ಮಗಳು. ಮಾನ ಮ ರ್ಯಾದಿ ಯಂದಡೆ—ಸ್ವಆಚಾರದ ಬಿರಿದು ಬಾವಲಿಗಳು. ಹುಟ್ಟ ಕಟ್ಟು ಯಂ ದಡೆ—ಸಕಲ ಜಾತಿಗಳ ಮಕ್ಕಳ ಸಂತಾನ ತೆಗದು ಅಳಿಯ ಸಂತಾನ ನೇಮಿ ಸಿದ್ದು. ಹಿಂದೆ ಮುಂದೆ ಯಂದಡೆ—೪, ೬, ೧೬, ನಾಲ್ಕು ಯಂಟು ಹದಿ ನಾರು ಪಟ್ಟ ಪಟ್ಟಾವಳಿ ಯಂಬ ಊಜು ನೀಜುಗಳು. ಹೆಚ್ಚು ಕಂಮಿ ಯಂ ದಡೆ—ಆವಾವ ಜಾತಿಗೆ ತಕ್ಕ ಮರ್ಯಾದಿಗಳು. ಬಳಿ ಬಂಣ ಯಂದಡೆ—

ಸ್ಥಾನ ಮಾನ ಇಲ್ಲದವರು. ಅಳಿ ಉಳಿ ಯಂದಡೆ—ಸಾವು ಬಾಳು ಬದುಕು ತಿಕ್ಕುನಂಥಾದ್ದು.

ಜಾತಿ ನೀತಿ ಯಂಬ ವಿವರ—ಜಾತಿ ತುಳುವರು, ಮಲವರು, ನಾಯುಂ ಮಾರರು, ಮಾಸಾದಿಕ, ಜೈನರು, ಹರಿಶೆಟ್ಟಿ, ಪರಿಯರು, ಕುಂಬಾರರು, ದೇವ ಡಿಗ, ಸಾಲಿಯ, ಮಲೆಕುಡಿಯ, ಪಾಂಚಾಲ, ಕ್ಷೌರಿಕ, ಅಗಸ, ಹಳೆಪೈಕ, ಮುಂಡಾಳ, ಕರಿಂಞರ, ಹೊಲೆಯ, ಅಂಡೇಕೊರಗ, ಇತ್ಯಾದಿ ಜಾತಿಗಳಿಗೆ ನೀತಿ ಯಂತೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ. ಆವಾವ ಜಾತಿ ಜಾತಿಗಳಿಗೆ ಊಜ ನೀಚಗಳೂ, ಅವರವರ ನೀತಿಗಳೂ ಇದ್ದಂತೆ, ಕೂಡಿ ನಡಕೊಳ್ಳ ಬೇಕು ಯಂತಾ ನೀತಿಗಳ ನೇಮಿಸಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಮಾನ ಮರ್ಯಾದಿಗಳು ಯಂತೆಂದಡಾ—ಸ್ಥಳ ಮನೆ, ಅರಸು ಬಲ್ಲಾಳ, ಹೆಗ್ಗಡೆಗಳ ಪುರಪ್ಪು, ನಾನು ಕೀರ್ತಿಗಳು, ಸ್ಥಳ ಮನೆ ಗ್ರಾಮ ತೀವೆಗಳು ಉಳ್ಳ ಪೇಟೆ ಪಟ್ಟಣಗಳುಳ್ಳ ಗ್ರಾಮ ಭೂಮಿಯಲ್ಲಿ ಳ, ಲ, ೧೬. ಬಾಳು ಭೂತದ ಮೇಲೆ ಉಳ್ಳ ಭೂಮಿಗಳು ಮೂಲವೆಂದು ವಿವರಿಸಿ ಮೊದಲು ಳ, ಲ, ೧೬, ಮುಂತಾದ ಅರಸು ಪಟ್ಟ ಪಟ್ಟಿ ಪಗದಿ ಉಂಟಾದ ಅಳಿ ಉಳಿ ಪರ್ಯಂತರ ತಾರತಮ್ಯಾನುಸಾರ ನಡದು ಬರುವದೇ ಹೊರ್ತು, ಸಾವನಕ ಮರ್ಯಾದಿಗೆ ಅಪೋಹವಿಲ್ಲದೆ ನಡದು ಬರಬೇಕೆಂದು ಕಟ್ಟು ಶೇರಿಸಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಹುಟ್ಟು ಕಟ್ಟು ಯಂತೆಂದಡಾ—ಮಕ್ಕಳ ಸಂತಾನ ತೆಗದು ಅಳಿಯ ಸಂ ತಾನವೇ ನಡಿಯ ಬೇಕೆಂತಾ ಜಗತ್ತಿನ ಅನಂತೇಶ್ವರನ ಮಧ್ಯಮಂಟಪದಲ್ಲಿ ಕಟ್ಟುಗಳ ಬರದು, ಇದ ವಿಾರಿದವನ ಸಂತಾನ ನಿಸ್ಸಂತಾನವಾಗಲಿ ಯಂಬ ಕಟ್ಟಂ ಬರದು, ಸ್ಥಾಪನೆ ಮಾಡಿದ ಹುಟ್ಟು ತೆಗದು ಅಳಿಯ ಸಂತಾನದ ಕಟ್ಟು ಮಾಡಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ. ಹುಟ್ಟು ಯಂತೆಂದಡಾ—ಸೂತಕ ಪಾತಕ, ಪಾಪ ಪುಣ್ಯ, ದಾನ ಧರ್ಮ, ಕೀರ್ತಿ ಅಪಕೀರ್ತಿ, ಹೆಂಡತಿ ಮಕ್ಕಳಿಗಲ್ಲದೆ, ಸಂತಾನಕ್ಕೆ ವಾರ್ಧಿಕ ಹೊರ್ತು, ಸೂತಿಕಾದಿಗಳು ಇಲ್ಲಾ, ಬದುಕಿಗೆ ಕಾರಣ ವೆಂಬ ಕಟ್ಟು ಬರಸಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಕಟ್ಟಳೆ ಯೆಂತೆಂದಡಾ—ಬ್ರಹ್ಮಣ ಮೂಲಕದಲ್ಲಿ ಶುಭಧಾರೆಗಳು ಇಲ್ಲಾ. ಸತ್ತರೆ ಮ್ಹಾಳ ಕಾರ್ಯಗಳು ಇಲ್ಲಾ. ಹೆತ್ತರೆ ಸತ್ತರೆ, ದರ್ಭೆ ಹಿಡಿದು ಪಂಚ ಗವ್ಯ ಪುಣ್ಯ ಹೋಮಕ್ಕೆ ಕಾರಣವಿಲ್ಲ. ಹೆತ್ತರೆ ಸತ್ತರೆ, ದೇವಸ್ಥಾನದಲ್ಲಿ ಇರುವ ನಿರ್ಮಾಲ್ಯ, ಹೆತ್ತವರ ಸತ್ತವರ ಹೆಸರಲ್ಲು ದೇವರ ಪೂಜೆ ಅಭಿಷೇಕ

ಜಾತಿ ಜಾತಿಗಳಿಗೆ ನೀತಿಗಳ ನೇಮಿಸಿ, ಅಳಿ ಉಳಿ ಸಂತಾನ ಮುತ್ತಿದರೆ, ಅದೇ ಸಂತಾನದಿ ಬಳಿ ಸಮಾನವಾದ ಹೆಂಣು ತಂದು, ಸಾಕಿ ಕೊಂಡರೆ, ಅದೇ ಹೆಂಣು ದತ್ತಸ್ವೀಕಾರವೆಂದೂ, ಮತ್ತು ಗಂಡು ಮಕ್ಕಳಿಗೆ ದತ್ತಸ್ವೀಕಾರ ಇಲ್ಲಾ ಯಂದೂ, ಮತ್ತಾ ಅಳಿ ಉಳಿ ಮರ್ಯಾದಿ ಸ್ಥಳಗಳಿಗೆ ಸಂತಾನವಿಲ್ಲಾ ಯಂದೂ, ಮಾರುವರೆ ತೀರದು, ಹೆಂಡತಿ ಮಕ್ಕಳಿಗೆ ಕೊಡುವರೆ ತೀರದು,—ಸ್ವೀಕಾರವಿ ಲ್ಲದೆ ಅಳಿದರೆ, ಅದಕ್ಕೆ ನಾಲ್ಕು ಯಂಟು ಹದಿನಾರು ಇದ್ದು, ಮತ್ತಾ ಬಳಿಸಾಲಿನ ಹೆಂಣು ಗಂಡು ತಂದು ನಿಲಿಸಿದಡೆ, ಅವರೇ ಬಾಧ್ಯಸ್ಥರಾದಾರೇ ಹೊರ್ತು, ಹೆಂಡತಿ ಮಕ್ಕಳಿಗೆ ಸಲ್ಲದು ಎಂಬ ಕಟ್ಟು ಬರಸಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಪೇಟೆ ಪಟ್ಟಣದ ವರ್ತಕರಿಗಾಗಲಿ, ಭೃತ್ಯ ಪರಿಜಾರಕ ಇತ್ಯಾದಿ ಮೂಲ ಸಮಸ್ತರಿಗೆ ಅಳಿಯ ಸಂತಾನವೆಂಬ ಸಂಬಂಧ ಯಂಟು, ಹಡಗು ಮೂರರಲ್ಲಿ ಬಂದ ಸಿದ್ಧರಸ ಹಸರು ರತ್ನಗಳಿಗೆ ಈ ದ್ವಾತ್ರಿಂಶದ್ಗಾತ್ರದ ಮಹಾಜನರುಗಳ ಶಾಸ್ತ್ರ ಕಟ್ಟಳೆಗೆ ವಿರೋಧವಾದ ಕಟ್ಟಳೆಗಳ ಉಂಟಿನಿಸಿ, ಬಂಡ ರಸರತ್ನಗಳಿಗೆ ಅಪಹಾರಕವಲ್ಲದ ಮೂಲಕವೆಂತೆಂದಡಾ—ಹಡಗುಗಳಿಗೆ ಆ ಕುಂಡೋದರನ ನಿಮಿತ್ಯವಾಗಿ ಬಲಿ ಪೂಜೆಗಳ ಕೊಟ್ಟು, ಆಗ ಈ ಬ್ರಹ್ಮನಾಮಗಳು ವಿರೋಧ ಯಂಬಲ್ಲಿ, ಉಭಯ ಪಕ್ಷನಾಥರು ಕೂಡಿ ಕೊಂಡು, ಮಹಾ ಜನರಿಗೆ ವಿರೋಧ ವಿಲ್ಲದ ಹಾಗೆ, ಈ ಪೂರ್ವಪಕ್ಷನಾಥರಿಗೆ ನಂದರಾಜನ ಶೀಮೆಯ ವಿಂಗಡಿಸಿ, ಬಲಗೈ ಬಲ್ಲಾಳರೆಂದೂ—ಈ ಪಶ್ಚಿಮಷೋಡಷ ಪಕ್ಷನಾಥರಿಗೆ ನಿಡಂಬನೆಂಬ ವನ ಅರಸ್ತನ ವಿಂಗಡಿಸಿ, ಯಡಗೈ ಯನಿಸಿ, ಈ ಉಭಯ ಪಕ್ಷನಾಥರಿಗೆ ಉಭಯ ಬಲ್ಲಾಳರು ಯಂಬ ಪಟ್ಟಾಭಿಷೇಕವಂ ಮಾಡಿಸಿ, ಈ ಉಭಯ ಬಲ್ಲಾ ಳರು ಬಳಿ ಗಲಕ್ಕೆ ಸಮರ್ಥರಾದವರೆಂದೂ, ಆಗ ಇವರು ಸತ್ತರೆ, ಇವರ ಸಂತಾ ನದ ಹುಟ್ಟು ಮಕ್ಕಳ ಸಂತಾನವಾದರೂ, ಅಳಿಯ ಸಂತಾನದ ಕಟ್ಟು ಕಟ್ಟ ಳೆಯೇ ನಡಿಯ ಬೇಕು. ಈ ಪಟ್ಟದ ಬಲ್ಲಾಳರು ಸತ್ತರೆ ಪ್ರತಿನಿಧಿ ಬೈಕುಂಟೆ ಹೆಣವ ಮಾಡಿ, ಈ ಹದಿನೆಂಟು ಬಳಿಯವರೂ ಕೂಡಿ, ಈ ಹೆಣವ ಸುಟ್ಟು, ಪೂಮಾಡ ಕೈಮಾಡ, ನೆಲೆಉಪ್ಪರಿಗೆ, ಚತುರಂಗ, ತೋರಣ, ಸರ್ವವಾದ್ಯ, ಭೇರಿ ದೋಲುಗಳಿಂದ ಈ ಹದಿನೆಂಟು ಬಳಿಯವರು ಅಕ್ಕಿ ಜಲ್ಲದೆ ಇದ್ದರೆ, ಈ ಹದಿನೆಂಟು ಬಳಿಗೆ ಸೂತಕ ಪಾತಕ ಉಂಟು. ಅದು ಗುರುವಾದ ಕಾರಣ, ಈ ಬಳಿಯವರು ಶಿಷ್ಯರಾದ ಕಾರಣ, ಈ ಸೂತಕ ಪಾತಕವ ಆಚರಿಸಿಕೊಂಡು ಬರ ಬೇಕು ಯಂಬ ಕಟ್ಟು ಮಾಡಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಜಾತಿ ಜಾತಿಗಳಿಗೆ ನೀತಿಗಳ ನೇಮಿಸಿ, ಅಳಿ ಉಳಿ ಸಂತಾನ ಮುತ್ತಿದರೆ, ಅದೇ ಸಂತಾನದ ಬಳಿ ಸಮಾನವಾದ ಹೆಂಣು ತಂದು, ಸಾಕಿ ಕೊಂಡರೆ, ಅದೇ ಹೆಂಣು ದತ್ತಸ್ವೀಕಾರವೆಂದೂ, ಮತ್ತು ಗಂಡು ಮಕ್ಕಳಿಗೆ ದತ್ತಸ್ವೀಕಾರ ಇಲ್ಲಾ ಯಂದೂ, ಮತ್ತಾ ಅಳಿ ಉಳಿ ಮರ್ಯಾದಿ ಸ್ಥಳಗಳಿಗೆ ಸಂತಾನವಿಲ್ಲಾ ಯಂದೂ, ಮಾರುವರೆ ತೀರದು, ಹೆಂಡತಿ ಮಕ್ಕಳಿಗೆ ಕೊಡುವರೆ ತೀರದು,—ಸ್ವೀಕಾರವಿ ಲ್ಲದೆ ಅಳಿದರೆ, ಅದಕ್ಕೆ ನಾಲ್ಕು ಯಂಟು ಹದಿನಾರು ಇದ್ದು, ಮತ್ತಾ ಬಳಿಸಾಲಿನ ಹೆಂಣು ಗಂಡು ತಂದು ನಿಲಿಸಿದಡೆ, ಅವರೇ ಬಾಧ್ಯಸ್ಥರಾದಾರೇ ಹೊರ್ತು, ಹೆಂಡತಿ ಮಕ್ಕಳಿಗೆ ಸಲ್ಲದು ಎಂಬ ಕಟ್ಟು ಬರಸಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಪೇಟೆ ಪಟ್ಟಣದ ವರ್ತಕರಿಗಾಗಲಿ, ಭೃತ್ಯ ಪರಿಚಾರಕ ಇತ್ಯಾದಿ ಮೂಲ ಸಮಸ್ತರಿಗೆ ಅಳಿಯ ಸಂತಾನವೆಂಬ ಸಂಬಂಧ ಯಂಟು, ಹಡಗು ಮೂರರಲ್ಲಿ ಬಂದ ಸಿದ್ಧರಸ ಹಸರು ರತ್ನಗಳಿಗೆ ಈ ದ್ವಾತ್ರಿಂಶದ್ಗಾತ್ರದ ಮಹಾಜನರುಗಳ ಶಾಸ್ತ್ರ ಕಟ್ಟಳೆಗೆ ವಿರೋಧವಾದ ಕಟ್ಟಳೆಗಳ ಉಂಟಿನಿಸಿ, ಬಂಡ ರಸರತ್ನಗಳಿಗೆ ಅಪಹಾರಕವಲ್ಲದ ಮೂಲಕವೆಂತೆಂದಡಾ—ಹಡಗುಗಳಿಗೆ ಆ ಕುಂಡೋದರನ ನಿಮಿತ್ಯವಾಗಿ ಬಲಿ ಪೂಜೆಗಳ ಕೊಟ್ಟು, ಆಗ ಈ ಬ್ರಹ್ಮನಾಮಗಳು ವಿರೋಧ ಯಂಬಲ್ಲಿ, ಉಭಯ ಪಕ್ಷನಾಥರು ಕೂಡಿ ಕೊಂಡು, ಮಹಾ ಜನರಿಗೆ ವಿರೋಧ ವಿಲ್ಲದ ಹಾಗೆ, ಈ ಪೂರ್ವಪಕ್ಷನಾಥರಿಗೆ ನಂದರಾಜನ ತೀನೆಯ ವಿಂಗಡಿಸಿ, ಬಲಗ್ಯೆ ಬಲ್ಲಾಳರೆಂದೂ—ಈ ಪಶ್ಚಿಮಷೋಡಷ ಪಕ್ಷನಾಥರಿಗೆ ನಿಡಂಬನೆಂಬ ವನ ಅರಸ್ತನ ವಿಂಗಡಿಸಿ, ಯಡಗ್ಯೆ ಯನಿಸಿ, ಈ ಉಭಯ ಪಕ್ಷನಾಥರಿಗೆ ಉಭಯ ಬಲ್ಲಾಳರು ಯಂಬ ಪಟ್ಟಾಭಿಷೇಕವಂ ಮಾಡಿಸಿ, ಈ ಉಭಯ ಬಲ್ಲಾ ಳರು ಬಳಿ ಗಲಕ್ಕೆ ಸಮರ್ಥರಾದವರೆಂದೂ, ಆಗ ಇವರು ಸತ್ತರೆ, ಇವರ ಸಂತಾ ನದ ಹುಟ್ಟು ಮಕ್ಕಳ ಸಂತಾನವಾದರೂ, ಅಳಿಯ ಸಂತಾನದ ಕಟ್ಟು ಕಟ್ಟ ಳೆಯೇ ನಡಿಯ ಬೇಕು. ಈ ಪಟ್ಟದ ಬಲ್ಲಾಳರು ಸತ್ತರೆ ಪ್ರತಿನಿಧಿ ಬೈಕುಂಟೆ ಹೆಣವ ಮಾಡಿ, ಈ ಹದಿನೆಂಟು ಬಳಿಯವರೂ ಕೂಡಿ, ಈ ಹೆಣವ ಸುಟ್ಟು, ಪೂಮಾಡ ಕೈಮಾಡ, ನೆಲೆಉಸ್ಪರಿಗೆ, ಚತುರಂಗ, ತೋರಣ, ಸರ್ವವಾದ್ಯ, ಭೇರಿ ದೋಲುಗಳಿಂದ ಈ ಹದಿನೆಂಟು ಬಳಿಯವರು ಅಕ್ಕಿ ಚಲ್ಲದೆ ಇದ್ದರೆ, ಈ ಹದಿನೆಂಟು ಬಳಿಗೆ ಸೂತಕ ಪಾತಕ ಉಂಟು. ಅದು ಗುರುವಾದ ಕಾರಣ, ಈ ಬಳಿಯವರು ಶಿಷ್ಯರಾದ ಕಾರಣ, ಈ ಸೂತಿಕ ಪಾತಕವ ಆಚರಿಸಿಕೊಂಡು ಬರ ಬೇಕು ಯಂಬ ಕಟ್ಟು ಮಾಡಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಹದಿನಾರು ಕಟ್ಟಳೆಗಳ ವಿವರ.

೧. ಈ ಅಳಿಯ ಸಂತಾನಕ್ಕೆ ವಂದು ಸಂತಾನಕ್ಕೆ ವಂದೇ ಹೆಂಣಾಗಿ, ಅದಕ್ಕೆ ಗಂಡ ಸತ್ತರೆ, ಮುಂದೆ ಸಂತಾನ ಅಭಿವೃದ್ಧಿ ಹ್ಯಾಗೆ ಯಂದು ಕೇಳಿ ಕೊಳ್ಳಲು, ಮತ್ತೋರ್ವನಿಗೆ ಹುಡುಗಿಯ ಕೊಡುವರೆ ತಂದೆ ತಾಯಿಗಳು ಯೋಗ್ಯರಲ್ಲಾ. ಮಾವ ಮೊದಲಾದ ಸಂತಾನದವರು ಕೊಡ ಬಹುದು. ತಂದೆ ತಾಯಿಗಳು ತನ್ನ ಹೆಣ್ಣಿಗೆ ಧಾರೆ ಯರದು ಕೊಡುವರೆ, ಧಾರೆ ಗಿಂಡಿ ಮುಟ್ಟುವರೆ ಹೊರ್ತು, ಧಾರಾ ಪೂರ್ವಕವಾಗಿ ಕೊಡುವ ಕಟ್ಟಳೆಗಳು ಇಲ್ಲ ನೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೨. ಅದರೊಳಗೆ ವಂಡು ಹೆಂಣಿಗೆ ಗಂಡ ಸತ್ತರೆ, ಆ ಹೆಂಣು ಬುಡವಳತಿ ಯಂಬ ಹೆಸರು. ಅದಕ್ಕೆ ಉಡಿಗೆ ಕೊಡದ ಮೊದಲು, ಅವಳಿಗೆ ಬಸರು ಬಂದಡೆ ಸರಿಜಾತಿಯವನಾದರೆ ಅತನ ಕೈಯ ಅಪರಾಧವ ಕೊಂಡು, ಆ ಹೆಂಣನ್ನು ಅತಗೆ ಬುಡಧಾರೆ ಯರದು ಕೊಡ ಬಹುದೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ. ಆ ಹೆಂಣಿಗೆ, ಮೇಲ ಜಾತಿಯವನಾದಡೆ, ಇದಿಸಿ ಕೊಡ ಬಹುದು. ಕೀಳು ಜಾತಿ ಯವನಾದರೆ, ಆತನ ಕೈಯ ಅಪರಾಧ ತೆಗದುಕೊಂಡು, ಈ ಹೆಂಣುಗಳನ್ನ ಬಲ್ಲಾಳರು ವಿಕ್ರಯ ಮಾಡ ಬಹುದೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೩. ಮತ್ತು ಮದುವೆಯಾದ ಹೆಂಣನ್ನು ಬಿಟ್ಟು, ಗಂಡನು ದೇಶಾಂತರಕ್ಕೆ ಹೋದರೆ, ವರ್ಷ ಐದು ದಾಟಿದ ಬಳಿಕ, ಮತ್ತೋರ್ವನಿಗೆ ಕೂಡಿಸಿ, ಉಡಿಗೆ ಕೊಡ ಬಹುದೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ. ಸರಿ ಜಾತಿ, ಊಜು ಜಾತಿಯಾಗಿ, ಅವಳಿಗೆ ಗಂಡ ಇಲ್ಲದ ವೇಳ್ಯದಲ್ಲಿ ಬಸರು ಬಂದರೆ, ಮೇಲ ಜಾತಿಗೆ ತೊಡಿಗೆ, ಸಮ ಜಾತಿಗೆ ಉಡಿಗೆ, ಹೀನ ಜಾತಿಗಾದರೆ ಬಿಡುಮಾನ್ಯ ಅಪರಾಧಗಳ ಮಾಡಿ, ಆ ಜಾತಿಗೆ ಕೂಡಿಸ ಬಹುದೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೪. ಆ ಹೆಂಣುಗಳಿಗೆ ಮುಡಿಪೆಯೊದ ಬಳಿಕ, ನಾಲ್ಕು ಮೂರು ಮಕ್ಕಳಾದ ಮೇಲೆ ಗಂಡ ದೇಶಾಂತರಕ್ಕೆ ಹೋದರೆ, ಹೆಂಣಿಗೆ ಬೇರೆ ವಬ್ಬನಿಗೆ ಉಡಿಗೆ ಹೊಂದಿ ಕೊಟ್ಟುವಳೆ ತೀರದು. ಅವಳು ಸಮ ಜಾತಿಯವನ ಸಂಗವ ಮಾಡಿ, ಗಂಡ ಬಾರದ ಮೆಳಗೆ ಬಸರು ಬಂದರೆ ಅವಳಿಗೆ ಉಡಿಗೆ ಕೊಡಿಸಲಿಕ್ಕೆ ಕೂಡದು. ಅದರೊಳಗೆ ಹೀನ ಜಾತಿಯವನಾದರೆ ಬಿಡುಮಾನ್ಯಳಾದಾಳು.

೫. ಮದುವೆಯಾದ ಹೆಂಣಿಗೆ ಗಂಡನಲ್ಲಿ ಆ ಗಂಡನು ಇವಳ ಹಾದರ ಕಂಡು, ಇವಳ ಬರ ಹೇಳಿ, ತೌರ ಮನೆಯವರಿಗೆ ವಪ್ಪಿಸಿದರೆ, ಅವಳನ್ನ ಬೇರೆ

ವಬ್ಬನಿಗೆ ಉಡಿಗೆ ಕೊಡ ಬಹುದು. ಗಂಡನು ತನ್ನ ಹೆಂಡತಿಯನ್ನ ಕೂಡಿ ಕೊಳ್ಳದೆ, ಮತ್ತೊಬ್ಬಳ ಕೂಡಿ ಕೊಂಡು, ಇವಳನ್ನ ಸಮನಾಗಿ ನೋಡದೆ ಇದ್ದರೆ, ಇವಳ ಸಂತಾನದವರು ಆ ಗಂಡನಿಂದ ಬರ ಹೇಳಿಸಿ, ಮತ್ತೊಬ್ಬನಿಗೆ ಉಡಿಗೆ ಕೊಡ ಬಹುದು. ಮತ್ತು ಹೆಂಡತಿಯನ್ನ ಕಂಡಾಬಟ್ಟೆ ಹೊಡದು, ಬೈದು, ಬಡದು, ಉಪದ್ರ ಪಡಿಸಿದರೆ, ನಾಲ್ಕು ಮೂರು ವೇಳ್ಯ ಗಂಡ ಹೆಂಡರಿಗೆ ವಿವೇಕಗಳ ಮಾಡಿಸ ಬಹುದು. ಮತ್ತು ಅನರೊಳಗೆ ಅವಿವೇಕಗಳ ಮಾಡಿ ಕೊಂಡರೆ, ಅವಳ ಸಂತಾನದವರು ಆ ಗಂಡನಿಂದ ಅವಳಿಗೆ ಬರ ಹೇಳಿಸಿ, ಬೇರೊ ಬ್ಬನಿಗೆ ಉಡಿಗೆ ಕೊಡಿಸ ಬಹುದೆಂದು ಕಟ್ಟು ಬರಸಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೬. ಮದುವೆಯಾಗುವ ಮೊದಲು ಹೆಣ್ಣುಗಳು ನೆರದರೆ, ಮದುವೆಯಾಗದ ಮೊದಲು ಬಸರು ಬಂದರೆ, ಹಿರೇ ಜಾತಿಯಾದರೆ ಅವಳಿಗೆ ಮತ್ತು ಬಸರು ಮಾಡಿದವನಿಗೆ ಸಹಾ ಅಪರಾಧ ಮಾಡಿ, ಆತನಿಗೆ ಇಟ್ಟು ಕೊಡ ಬಹುದು. ಜಾತಿಯವನಿಗೆ ಮದುವೆ ಮಾಡಿ ಕೊಡ ಬಹುದು. ನೀಚ ಜಾತಿಯವನಾ ದರೆ, ಅವಳು ಬಿಡುಮಾನ್ಯಳಾಗುತ್ತಾಳೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೭. ಆ ಪ್ರಕಾರ ನೆರದಂಥಾ ಹೆಂಣು ಮದುವೆಯಾಗುವ ಮೊದಲು ಯಾರ ನ್ನಾದರೂ ಕೂಡಿಕೊಂಡು ವೋಡಿ ಹೋದರೆ ಆ ಕೂಡಿದವನು ಸರಿ ಜಾತಿಯ ವನಾದರೆ, ಆತನಿಗೆ ಮದುವೆ ಮಾಡಿ ಕೊಡ ಬಹುದು; ನೀಚ ಜಾತಿಯವನಾ ದರೆ ಬಿಡುಮಾನ್ಯ; ಊಚು ಜಾತಿಯವನಾದರೆ ಇಡಿಸಿ ಕೊಡ ಬಹುದು ಯಂದು ಕಟ್ಟಳೆ ಮಾಡಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೮. ಮದುವೆಯಾದ ಹೆಣ್ಣು ಗಂಡನ್ನ ಬಿಟ್ಟು, ಸರಿ ಜಾತಿಯವನ್ನ ತೆಗದು ಕೊಂಡು ವೋಡಿ ಹೋದರೆ, ಅನಳನ್ನ ಆತಗೆ ಉಡಿಗೆ ಕೊಡಿಸ ಬಹುದು. ಮೇಲು ಜಾತಿಯಾದರೆ ಇಡಿಸಿ ಕೊಡ ಬಹುದು. ನೀಚ ಜಾತಿಯಾದರೆ ಬಿಡು ಮಾನ್ಯ ಯಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೯. ಕ್ಷತ್ರಿಯರ ಹೆಂಣುಗಳಿಗೆ ಕ್ಷತ್ರಿಯರ ಮರ್ಯಾದೆ. ಕ್ಷತ್ರಿಯರಿಗೆ ಬ್ರಾಹ್ಮಣರಿಗೆ ಸಹಾ ಕೈಧಾರೆ ಮಾಡಿ, ಮದುವೆ ಮಾಡಿ ಕೊಡ ಬಹುದು; ಸರಿ ಜಾತಿಯಾಗಲಿ ಹೀನ ಜಾತಿಯಾಗಲಿ ಆದರೆ, ಬಿಡುಮಾನ್ಯಳಾಗುತ್ತಾಳೆ ಯಂ ದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೧೦. ಜೈನರ ಜಾತಿಗೆ, — ಸಮ ಜಾತಿಯಾದರೆ, ಕೂಡಿಸಿ ಕೊಡ ಬಹುದು.

ಹೆಚ್ಚು ಕಂಮಿ ಜಾತಿಗೆ ಕೂಡಿದವಳಾದರೆ, ಬಿಡುಮಾನ್ಯಳಾಗುತ್ತಾಳೆ ಯಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೧೧. ಮಲವರ ಜಾತಿ ಹೆಂಣಾದರೆ, ಮೇಲು ಜಾತಿ ಸಮ ಜಾತಿಯಾದರೆ, ಅವಳಿಗೆ ಇಡಿಸಿ ಕೊಡ ಬಹುದು. ಹೀನ ಜಾತಿಯವನಾದರೆ ಬಿಡುಮಾನ್ಯ. ಬರ ಹೇಳುವರೆ ಅಸಖ್ಯನೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೧೨. ನಾಯಂಮಾರ ನಾಯರ ಈ ೨ ಜಾತಿಗಳಿಗೆ ಕಂನ್ಯಾಕಲ್ಯಾಣ ಹೊತ್ರು ಸ್ವಯಂವರವಿಲ್ಲಾ. ಆ ಮೇಲೆ ಸ್ವಜಾತಿಗೆ, ಬ್ರಾಹ್ಮಣರು ಮೊದಲಾದ ಊಚು ಜಾತಿಗೆ ಸಹಾ, ಇಡಿಸಿ ಕೊಡ ಬಹುದೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೧೩. ಕದಂಬ ಜಾತಿ,—ಕುಮಾರಬಲ್ಲಾಳನಾದರೆ, ಸ್ವಜಾತಿ ಕ್ಷತ್ರಿ ಬ್ರಾಹ್ಮಣಾದಿಗಳಿಗೆ ಇಡಿಸಿ ಕೊಡ ಬಹುದು; ಹೀನ ಜಾತಿಯಾದರೆ ಬಿಡುಮಾನ್ಯಳಾದಾಳು ಯಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೧೪. ಸ್ಥಾನಿಕರಿಗೆ, ಅಂಬಲವಾಸಿಗಳಿಗೆ,—ಸ್ವಜಾತಿ ಬ್ರಾಹ್ಮಣ ಜಾತಿ ಅಲ್ಲದೆ ಅಂನ್ಯ ಹೀನ ಜಾತಿಯಾದರೆ, ಬಿಡುಮಾನ್ಯಳಾದಾಳು ಯಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೧೫. ಪದಾರ್ಥಿ ಹೊರಪೊದುವಾಳು,—ಈ ಜಾತಿ ಹೆಂಣುಗಳಿಗೆ ಸರಿ ಜಾತಿಯಾದರೂ, ಊಚು ಜಾತಿಯಾದರೂ, ಉಡಿಗೆ ಕೊಟ್ಟು, ಇಡಿಸಿ ಕೊಡ ಬಹುದು ಯಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

೧೬. ಅರಸುಗಳಿಗೆ ಆದರೆ,—ಬ್ರಾಹ್ಮಣಧಾರೆಯ ಮಾಡಿ ಕೊಡ ಬಹುದು. ಆತನಲ್ಲಿ ಹುಟ್ಟಿದ ಮಕ್ಕಳಿಗೆ ಅಂನ್ಯತವಾಗಿ ಕೊಡುವದರಿಂದ, ಕಂಭ ಕುಂಭಾದಿಗಳಿಂದ ಧಾರೆ ಯರಸಿ ಕೊಡ ಬಹುದೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ. ಆ ಅರಸುಗಳಲ್ಲಿ ಅಂನ್ಯತವಾಗಿ ಕೊಡುವರೆ ಅಸಾಧ್ಯವಾದ ಅರಸುಗಳಾದರೆ, ಬ್ರಾಹ್ಮಣ ಮರ್ಯಾದೆ ಧಾರೆಗಳು ಮಾಡಿಸುವದು ಅಸಾಧ್ಯವೆಂದನಾ ಭೂತಾಳಪಾಂಡ್ಯ. ಚೌಟ ಬಂಗರರಿಗೆ ಬ್ರಾಹ್ಮಣ ಕಟ್ಟಳೆ, ಶುಭ ಅಶುಭ ಮರ್ಯಾದೆಗಳು ಉಂಟೆನಿಸಿ, ಈ ಚಿಟುಪಾಡಿ ನಿಡಂಬೂರು ಬಲ್ಲಾಳರಿಗೆ ಶುಭ ಅಶುಭಗಳಲ್ಲಿ ಅಳಿಯ ಸಂತಾನದ ಮರ್ಯಾದಿಗಳು ಉಂಟೆನಿಸಿ, ಈ ತುಳುವರ ಮೊದಲು ನಾವಿಕರುಗಳಿಗೆ ಹುಟ್ಟು ಕಟ್ಟು ಕಟ್ಟಳೆ ಅಟಕವಾಗಿ ನಡದು ಬರ ಬೇಕೆಂಬ ಹುಟ್ಟು ಕಟ್ಟು ಕಟ್ಟಳೆಗಳ ಮಾಡಿಸಿದನಾ ಭೂತಾಳಪಾಂಡ್ಯ.

ಈ ಭೂತಾಳಪಾಂಡ್ಯ ರಾಯಗೆ ಪಟ್ಟವಾದ ೧೨ನೇ ವರುಷದಲ್ಲಿ ಘಟ್ಟದ ಮೇಲಿಂದ ಕೆಸವಂಣ ಬಸವಂಣ ಯಂಬ ಜೈನರ ವಿದ್ವಾಂಸರನ್ನ ಕರಸಿ, ಅವರಿಗೆ ಉಡುಗರೆ ಉಚಿತಗಳ ಕೊಟ್ಟು, ಅವರಿಂದ ಉಂಟಾದ ಮುವ್ವತ್ತೆರಡು ನಗರಗಳ ವಿವರ. ಕೆಸವಂಣಗೆ ಬಾರಕೂರಾದಿ ೧೬ ನಗರ. ಬಸವಂಣಗೆ ಮಂಗಲೂರಾದಿ ೧೬ ನಗರ. ಬಾರಕೂರಿಗೆ ಚೌಟರೂ ಚಿಟಪಾಡಿ ಬಲ್ಲಾಳರೂ ನಗರಾಧೀಶ್ವರರು. ಮಂಗಲೂರಿಗೆ ಬಂಗರೂ ನಿಡಂಬೂರ ಬಲ್ಲಾಳರೂ ನಗರಾಧೀಶ್ವರರು. ಈ ೩೨ ನಗರಗಳಿಗೆ ಮುವ್ವತ್ತೆರಡು ಬಸ್ತಿಗಳನ್ನು ಕಟ್ಟ, ಜೈನಾದಿ ಉತ್ತಮರು ಇರುವ ಪೇಟೆಗೆ, ಪೇಟೆಯಂತಾ ಹೆಸರು. ಅದರಲ್ಲಿರು ವಾತನೇ ಪಟ್ಟಣಸೆಟ್ಟ. ೪—೮—೧೬ ಯಂಬ ಜನರು ಪೇಟೇ ಹಲ್ಲರು. ಈ ಚತುಸ್ಸಂಗದಲ್ಲಿ ಶೇರಿದ ಜನರಿಗೆ ಪೇಟೆಯವರು ಯಂತಾ ಹೆಸರು. ಬ್ರಹ್ಮ, ಕ್ಷತ್ರಿ, ವೈಶ್ಯ, ಶೂದ್ರ, ಈ ನಾಲ್ಕು ವರ್ಣವು ವಂದೇ ಸ್ಥಳದಲ್ಲಿ ಕೂಡುವದಾದ ಕಾರಣ, ಇದಕ್ಕೆ ಚತುಸ್ಸಂಗ ಯಂತಾ ಹೆಸರು. ಈ ಪೇಟೆಯಲ್ಲಿ ನಾನಾ ಜೀನಸುಗಳ ಮಾರುವಂಥಾ ಜನರಿಗೆ ವರ್ತಕರು ಯಂತಾ ಹೆಸರು. ಇವರಲ್ಲದೆ ಚಿಂನ ಬೆಳ್ಳಿ ಕ್ರಯ ವಿಕ್ರಯ ಮಾಡುವಂಥವರು ಚಿನಿವಾರ್ದರು ಯಂತಾ ಹೆಸರು. ಈ ಪೇಟೆಯಲ್ಲಿ ಬಂದಂಥಾ ಜೀನಸುಗಳು, ಹೋಗುವಂಥಾ ಜೀನಸುಗಳು ಸಹಾ ಸುಂಕ ಗುತ್ತಿಗೆ ಮುಂದೆ ತೂಕ ಮಾಡುವಂಥವರು ತೋಲಾಧಾರಿಗಳು. ಸಕಲ ಜೀನಸುಗಳ ಕೂಡಿಗೆ ಮಾಡಿ, ಸಕಲ ಅಂಗಡಿಕಾರರಿಗೆ ಕೊಟ್ಟು ಮಾರಿಸುವಂಥವರು ಸಾವಕಾರರು. ನವರತ್ನ ವಸ್ತ್ರಾದಿಗಳನ್ನೂ, ನವಧಾನ್ಯಗಳನ್ನೂ ಯೆತ್ತಿನ ಮೇಲೆ ತಂದು, ಹೇರಾಟಗಳ ನಡಿಸುವಂಥವರು ಶೆಟ್ಟಿಗಾರರು. ಈ ಜನರೆಲ್ಲಾ ವಂದೇ ದಿಕ್ಕಿನಲ್ಲಿ ಕೂಡಿದರೆ ಸಾವಕಾರರು ಯಂತಾ ಹೆಸರು. ಇದರಲ್ಲಿ ಕೈವಾಡದ ಜನರು ಈ ಪೇಟೆ ಬೈಸಾಲು* ಮನೆಗಳ ಕಟ್ಟಿಸಿದರೆ, ಕೇರಿ ಯನಿಸಿ ಕೊಳ್ಳುವದು. ಜವುಳಿಗಳ ಮಾರುವ ಅಂಗಡಿಗಳು ಸಮನಾಗಿ ಇದ್ದರೆ, ಅದು ಮಳಗಿ ಯನಿಸುವದು. ಅದರಲ್ಲಿ ಸಾವಿರಾರು ವರಹಾನ್ನ ಜೀನಸುಗಳ ತುಂಬಿಸಿ ಇಡುವಂಥಾ ದೊಡ್ಡ ಮನೆಗಳು ಇದ್ದರೆ, ಭಂಡಸಾಲೆಗಳು ಯಂತಾ ಯನಿಸಿ ಕೊಳ್ಳುವದು. ಪಾಂಚಾಲರ ಕೇರಿಯಲ್ಲಿ ಚಿಂನ ಬೆಳ್ಳೀ ನಗಗಳ ಮಾಡುವಲ್ಲಿ, ತಾಂಬ್ರ ಹಿತ್ತಾಳಿ ಪಾತ್ರೆಗಳ ಮಾಡುವಲ್ಲಿ, ಕಬ್ಬಣ

* ಉಭಯ ಸಾಲು.

ಬಡಿಗೆ, ಮರದ ಬಡಿಗೆ, ಕಡಹದ ಕೆಲಸ ಇತ್ಯಾದಿಗಳ ನೂಡುವ ಸ್ಥಳಕ್ಕೆ ಪಾಂ ಚಾಲರ ಕೇರಿ ಯನಿಸಿ ಕೊಳ್ಳುವದು. ಕುಂಬಾರರು, ದೇವಡಿಗರು, ವಾಲಗ ದವರು ಇದ್ದರೆ, ಅದು ಕುಂಬಾರ ಕೇರಿಯೊಳಗೆ ಅಡಕ. ಸಮಗಾರರು, ಅಗ ಸರು, ಕ್ಷೌರಿಕರು, ಹೊಲಿಗೆಯವರು, ಇವರೆಲ್ಲಾ ಸಮಗಾರ ಕೇರಿಯಲ್ಲಿ ಅಡಕ. ಮತ್ತು ಮ್ಲೇಚ್ಛಾದಿ ಜನರು ವ್ಯಾಪಾರಸ್ಥ ಮೊದಲಾದವರು ಸಹಾ ಇದ್ದರೆ, ಅದು ವ್ಯಾಪಾರ ಕೇರಿ ಯನಿಸುವದು. ಮತ್ತು ಸೂಳೆಯರು, ಮಾಲೆಯರು, ಬಿಡು ಸೂಳೆಯರು ಇತ್ಯಾದಿಗಳು ಇದ್ದರೆ, ಸೂಳೆಗೇರಿ ಯನಿಸುವದು. ಮತ್ತು ಮಧು ಮಾಂಸ ಸಾರಾಯಾದಿಗಳ ಮಾರುವ ಸ್ಥಳಗಳಿಗೆ ನಿಷಿದ್ಧ ಕೇರಿ ಯಂತಾ ಹೆಸರು. ಆ ಕೇರಿಯ ಸಮೀಪದಲ್ಲಿ ಹೊಲೇರ ಸಾಲು ಗುಡಿಗಳು ಇದ್ದರೆ, ಹೊಲಗೇರಿ ಯಂತಾ ಹೆಸರು. ಕೇರಿಗಳು ಇಲ್ಲದೆ, ಬರಿ ಪೇಟೆಯಾದರೆ, ಪೇಟೆ ಯನಿಸು ವದು. ಕೇರಿಗಳಿರೆ, ಪಟ್ಟಣ ಯನಿಸುವದು. ಆ ಪಟ್ಟಣದಲ್ಲಿ ಸುತ್ತ ಗಂಡಿ, ಮಧ್ಯಕೋಟೆ, ಗಡಿಗಡಿಗಳಲ್ಲಿ ಗಂಡಿ, ಅಲ್ಲಿ ಅರಸುಪಟ್ಟ ಸಹಾ ಇದ್ದರೆ ಅದು ಬಂದರ ಯನಿಸುವದು. ಅದರಲ್ಲಿ ಲಕ್ಷಗುಡಿಗಟ್ಟು ಇದ್ದರೆ, ನಗರ ಯನಿಸು ವದು. ಮತ್ತು ಚಾತುರ್ಲಕ್ಷ ಗುಡಿ ಮೇಲೆ ಆದರೆ, ಆ ನಗರಕ್ಕೆ ಜಯಂತಿ ಯಂಬ ಹೆಸರು.

ಈ ಮುವ್ವತ್ತೆರಡು ನಗರ ಯಂದಡೆ, ಬಾರಕೂರಾದಿ ೧೬ ನಗರಕ್ಕೆ ೪ ಲಕ್ಷ ಗುಡಿಗಟ್ಟು, ಮಂಗಲೂರಾದಿ ೧೬ ನಗರಕ್ಕೆ ಮೂರು ಲಕ್ಷ ಗುಡಿಗಟ್ಟು. ಆ ಬಾರಕೂರಾದಿ ೧೬ ನಗರಗಳ ವಿವರ—ಬಾರಕೂರು ೧. ಕಡಮ ೨. ಮೂಡ ಬಿದ್ರೆ ೩. ಕರ್ಕಾಳ ೪. ಬಸರೂರು ೫. ಬಂಗಾಡಿ ೬. ಪಡುಬಿದ್ರೆ ೭. ಯೆಣ್ಣೂರು ೮. ಕಾಪು ೯. ಮುದ್ರಾಡಿ ೧೦. ಸುರಾಲು ೧೧. ನಾರಾವಿ ೧೨. ಯೆರ್ಲಮೊಳ ೧೩. ಅಳವು ೧೪. ಮುಂಡ್ಕೂರು ೧೫. ಬೈಲಂಗಡಿ ೧೬. ಇವು ಕೆಸವಂಣನ ಪೇಟೆ, ಪಟ್ಟಣ, ಬಂದರ, ನಗರ ಇತ್ಯಾದಿಗಳು. ಬಸವಂಣನು ಮಾಡಿದ ಸಗೇರಗಳ ವಿವರ—ಮಂಗಲೂರು ೧. ಕಾಸರಗೋಡು ೨. ಮೂಲ್ಕಿ ೩. ವಿಟ್ಲ ೪. ಉಳ್ಳಾಲ ೫. ಬಂಟ್ವಾಳ ೬. ಮಣೇಲು ೭. ಉಡುಪಿ ೮. ಪಣಂಬೂರು ೯. ನೆಲ್ಲಿಕಾರ ೧೦. ಮಂಜೇಶ್ವರ ೧೧. ನೇರಂಕಿ ೧೨. ಪಾಣೆ ಮಂಗಲೂರು ೧೩. ಮರದಾಳ ೧೪. ವಳಲಂಕೆ ೧೫. ಸುಳ್ಯ ೧೬. ಇವು ಬಸವಂಣ ಮಾಡಿದ ನಗರಗಳು. ಇವು ಭೂತಾಳಪಾಂಡ್ಯನ ಹುಟ್ಟು ಕಟ್ಟು ಕಟ್ಟಳೆಗಳಂ ಸಮಾಪ್ತ.

ಅಳಿಯ ಸಂತಾನದ ಬಳಿಗಳ ವಿವರ.

೧. ಬಾಗೆಟ್ಟಣಾಯ. ೨. ಬೊಂನ್ಯಂಣಾಯ. ೩. ಪುಲ್ಯಟ್ಟಣಾಯ. ೪. ಸಾಲಂಣಾಯ—೧. ಬಂಗರಂಣಾಯ, ಇರುವತ್ತೂರುಬಳಿ; ಇದಕ್ಕೆ ಹೆಂಣು ಗಂಡು ಕೊಡುವ ಮರ್ಯಾದಿ ಇಲ್ಲಾ. ೨. ಕುಂದಲಂಣಾಯ, ೩. ಪಂಗ ಲಂಣಾಯ, ೪. ಕರ್ಬೂರಂಣಾಯ; ಇವು ೪ ಬಳಿಯೂ ವಂದೇ. ವಳಗೆ ಬರದ ಪುಲ್ಯಟ್ಟಂಣಾಯ ಮೊದಲಾದ ೪ ಬಳಿಗೂ ನೆಂಟತನ ಉಂಟು.—ಪೆರ್ಗಡಂ ಣಾಯ. ಕೆಲ್ಲರಬಂಣಾಯ. ಹಿರಿಬಂಣಾಯ. ಈ ೩ ಬಳಿಗೆ ನೆಂಟತನ ವಿಲ್ಲಾ.—ಉಪ್ಪುರಂಣಾಯ. ಉದ್ದರಂಣಾಯ. ಈ ೨ ಬಳಿಯು ವಂದೇ ಆಗಿರುತ್ತದೆ—ಕೋಚಟ್ಟಬಂಣಾಯ, ಕೋಚಿರಂಣಾಯ; ಈ ೨ ಬಳಿಯು ವಂದೇ ಆಗಿರುತ್ತದೆ.—ಸಾಲಬಂಣಾಯ, ಐಯಬಂಣಾಯ; ಈ ೨ ಬಳಿಯು ವಂದೇ.—ನೆಲಬಂಣಾಯ ಉಜಟ್ಟಬಂಣಾಯ; ಈ ೨ ಬಳಿಯೂ ವಂದೇ.—ಉಳಿಬಂಣಾಯ, ಕುಂದೊಣಿಬಂಣಾಯ, ಕರಂಬರಂಣಾಯ, ಬರ್ಮರಂ ಣಾಯ; ಇವು ನಾಲ್ಕಕ್ಕೆ ವತ್ತು ಬಳಿ ಇಲ್ಲಾ.—ಯಲ್ಲಾ ಬಳಿಯಲ್ಲಿಯೂ ಇವರಿಗೆ ನೆಂಟತನವಾಗುತ್ತದೆ. ಅಂತು ಬಳಿ *ಗಲಕ್ಕಂ ಸಮಾಪ್ತ.

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* ಲೆಖ್ಖ ಮಾಡಿದರೆ ಹದಿನಾರೇ ಬಳಿ ಆಗುತ್ತದೆ.